

No. 15627

United States
Court of Appeals
for the Ninth Circuit

TORRANCE NATIONAL BANK, a national
banking association, Appellant,

vs.

THE AETNA CASUALTY & SURETY COM-
PANY, a corporation, Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California,
Central Division

FILED

AUG 21 1957

PAUL P. O'BRIEN, CLERK

No. 15627

United States
Court of Appeals
for the Ninth Circuit

TORRANCE NATIONAL BANK, a national
banking association, Appellant,

vs.

THE AETNA CASUALTY & SURETY COM-
PANY, a corporation, Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California,
Central Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amended Complaint for Declaratory Relief...	3
Amendment to Amended Complaint.....	14
Answer to Amended Complaint and Amend- ment to Amended Complaint.....	16
Appeal:	
Certificate of Clerk to Transcript of Record on	39
Designation of Record on (USCA).....	122
Notice of	39
Statement of Points on Which Appellant In- tends to Rely on (USCA).....	120
Certificate of Clerk to Transcript of Record...	39
Decision, Memorandum	21
Designation of Record on Appeal (USCA)....	122
Findings of Fact and Conclusions of Law.....	28
Judgment	37
Minutes of the Court:	
Dec. 5, 1955—Hearing on Motion to Dismiss	13
Feb. 29, 1956—Motion to Dismiss Denied....	15

ii.

Minutes of the Court—(Continued):

Nov. 28, 1956—Trial.....	20
Apr. 11, 1957—Hearing on Motion to Reopen and Reargue—Denied	28
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	39
Statement of Points on Which Appellant In- tends to Rely (USCA).....	120
Transcript of Proceedings and Testimony.....	41
Closing Argument by Mr. McLaughlin...107, 119	
Closing Argument by Mr. Shallenberger....	114
Witnesses:	
Alden, James R.	
—direct	42
—cross	50
—redirect	62, 77, 79, 81
—recross	76, 77, 80
Hood, William A.	
—direct	85
—cross	93
Sandstrom, Anna	
—direct	100
—cross	104
Whitacre, Gale W.	
—direct	94
—cross	99

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

McLAUGHLIN & CASEY,

1224 Bank of America Building,
650 South Spring Street,
Los Angeles 14, California.

For Appellee:

CRIDER, TILSON & RUPPE,

Room 530, Fidelity Building,
548 South Spring Street,
Los Angeles 13, California. [1]*

* Page numbers appearing at bottom of page of Original Transcript of Record.

In The District Court of the United States, Southern District of California, Central Division

No. 15726-C

TORRANCE NATIONAL BANK, a national bank-
ing association, Plaintiff,

VS.

THE AETNA CASUALTY & SURETY COM-
PANY, a corporation, Defendant.

AMENDED COMPLAINT FOR DECLARATORY RELIEF

Comes now the plaintiff above named and pursuant to leave granted by the above-entitled Court at the time of the making of its order granting defendant's motion for a more definite statement, files its amended complaint, and for a cause of action against the defendant, alleges:

I.

Plaintiff above named is now and has been at all times herein mentioned, a national banking association organized and existing under and by virtue of the laws of the United States and having its office and principal place of business in the City of Torrance, County of Los Angeles, State of California.

II.

Defendant The Aetna Casualty & Surety Company is now and has been at all times herein men-

tioned, a corporation organized and existing under and by virtue of the laws of the State of [2] Connecticut, duly qualified to transact business in the State of California.

III.

That on the 25th day of June, 1948, the defendant signed, sealed and delivered to plaintiff an instrument in writing designated as "Bankers Blanket Bond." That a photostatic copy of such bond is attached hereto, marked Exhibit "A" and made a part hereof. That at the time of the issuance and delivery of the said bond, said defendant also signed and caused to be attached to the said bond and delivered to plaintiff with the said bond, three instruments each of which is designated as "Rider." That photostatic copies of said three riders are attached hereto, marked Exhibits "B," "C" and "D" respectively, and made and part hereof.

IV.

That on the 25th day of June, 1951, said defendant signed, issued and delivered to plaintiff an instrument in writing designated as "Rider," a photostatic copy of which is attached hereto, marked Exhibit "E" and made a part hereof. That the said bond, as amended by the said riders hereinabove described, is now and has been at all times herein mentioned, in full force and effect.

V.

Enesco Federal Credit Union is now and has been at all times herein mentioned, a federal credit

union organized as a corporation under the laws of the United States of America and having its principal place of business in the City of Torrance, County of Los Angeles, State of California. That at all times herein mentioned, Joseph Alden was Secretary, Treasurer and General Manager of Enesco Federal Credit Union.

VI.

That on the 2nd day of April, 1953, Enesco Federal Credit Union maintained a checking account with plaintiff and had on deposit with plaintiff in said account, the sum of \$10,483.07. That [3] on the said date, Joseph Alden presented to plaintiff a check payable to "cash" wherein and whereby plaintiff was directed to pay to the order of "cash" the sum of \$30,000.00. That Joseph Alden signed the said check as Secretary and Treasurer of Enesco Federal Credit Union and presented the said check to plaintiff for payment on the 2nd day of April, 1953. That a photostatic copy of said check with the endorsements on the reverse side is attached hereto, marked Exhibit "F" and made a part hereof. That plaintiff thereupon received the said check from Joseph Alden and paid on account of the said check the sum of \$30,000.00 in currency, lawful money of the United States. That all of the said currency was delivered to the said Joseph Alden at said time, who thereupon left the plaintiff's banking premises with the said currency.

That at the time Joseph Alden presented the said check and received the currency as above de-

scribed, he orally stated and represented to plaintiff that the said currency was needed by Enesco Federal Credit Union for the purpose of cashing payroll checks of employees of National Supply Company, a corporation, in Torrance, California, on April 3, 1953, and that the payroll checks cashed for such employees would forthwith be endorsed and delivered to plaintiff in repayment of any overdraft on the account of Enesco Federal Credit Union and for the purpose of crediting any balance remaining after the repayment of any such overdraft to the bank account of Enesco Federal Credit Union.

VII.

That Joseph Alden had not been authorized by Enesco Federal Credit Union to sign the said check or to present it to plaintiff or to receive the said \$30,000.00, or any part thereof from plaintiff. That the said Joseph Alden had forged the name of Enesco Federal Credit Union to the said check and said Joseph Alden at all times intended to use the said check for the purpose of obtaining the \$30,000.00 in cash, and intended to use [4] the said \$30,000.00 for his own use and benefit and not for the use or benefit of Enesco Federal Credit Union.

VIII.

That plaintiff at all times believed that the said check was genuine and that Joseph Alden had the authority to sign the said check in behalf of Enesco Federal Credit Union, and believed that the \$30,000.00 which plaintiff paid on account of said check

to Joseph Alden was to be used by Joseph Alden for the use and benefit of Enesco Federal Credit Union, in connection with the business and activities of Enesco Federal Credit Union, that is, the business of cashing checks for employees of National Supply Company, a corporation. That plaintiff would not have cashed the said check or paid out the said \$30,000.00, or any part thereof, to Joseph Alden, if plaintiff had known that Joseph Alden had no authority to sign the said check on behalf of Enesco Federal Credit Union and that Joseph Alden had no authority from Enesco Federal Credit Union to overdraw the said account and to receive the said \$30,000.00.

IX.

That at all times Joseph Alden was authorized by Enesco Federal Credit Union to draw checks on the account of Enesco Federal Credit Union at plaintiff's bank and to withdraw moneys from such account upon the presentation of any such checks for the purpose of obtaining moneys for the use of Enesco Federal Credit Union's business of lending money to its members and of paying expenses of its operation, but the said Joseph Alden was never authorized to draw checks on the said account for the purpose of obtaining money for use in the check cashing business of Joseph Alden, and Joseph Alden was never authorized to use any checks so drawn by him and to overdraw the Enesco Federal Credit Union's account at plaintiff's bank, that is, to receive money on account of any such checks in excess of the amount of money which Enesco [5]

Federal Credit Union had on deposit with plaintiff's bank. That the said withdrawal of the said \$30,000.00 by Joseph Alden was unauthorized by Enesco Federal Credit Union and improper, for each of the following reasons:

1. In withdrawing the \$30,000.00 upon the presentation of such check, Joseph Alden overdrew the account of Enesco Federal Credit Union in the sum of \$19,516.93.

2. Joseph Alden had not been authorized by Enesco Federal Credit Union to withdraw or use any funds of Enesco Federal Credit Union in connection with the check cashing business and operations of Joseph Alden.

That plaintiff at all times believed that Joseph Alden did have the authority to withdraw the said \$30,000.00, even though such withdrawal overdrew the account of Enesco Federal Credit Union and plaintiff further believed at all times that Joseph Alden was operating a check cashing business on the premises of Enesco Federal Credit Union for and in behalf of Enesco Federal Credit Union; that plaintiff did not know that such check cashing business was a business of Joseph Alden and not a business of Enesco Federal Credit Union.

X.

Plaintiff is informed and believes and upon such information and belief alleges: That the said \$30,000.00 in currency paid by the plaintiff to Joseph Alden, as hereinabove alleged, never was used for the purpose of cashing payroll checks as above de-

scribed; that Joseph Alden was robbed of the said \$30,000.00 in currency while returning from plaintiff's bank to his place of business at Enesco Federal Credit Union, and the said currency never was received by Enesco Federal Credit Union.

XI.

That in truth and in fact, Enesco Federal Credit Union had not been cashing payroll checks of employees of National Supply [6] Company and had not been engaging in the business of cashing checks at all, but that said business of cashing checks had been carried on by Joseph Alden on the premises of Enesco Federal Credit Union and it was the intention of Joseph Alden at all times to obtain the said money from plaintiff on the said check and to use the said funds in connection with Joseph Alden's said check cashing activities.

XII.

That plaintiff has been damaged in the sum of \$30,000.00 by reason of its payment of the said \$30,000.00 to Joseph Alden on the check described under Paragraph VI hereinabove and plaintiff has not been reimbursed for any part of the said \$30,000.00.

XIII.

That plaintiff heretofore filed an action in the Superior Court of the State of California in and for the County of Los Angeles, bearing said Superior Court No. 612214, against Enesco Federal Credit Union as defendant, in which action plain-

tiff contended that plaintiff had the right to offset a balance of \$10,483.07 which was on deposit in plaintiff's bank to the credit of Enesco Federal Credit Union at the time that the said check was cashed and the \$30,000.00 paid to Joseph Alden as hereinabove alleged, and plaintiff also sought to recover the difference between the said \$10,483.07 and the \$30,000.00, to-wit: the sum of \$19,516.93 from Enesco Federal Credit Union.

That on the 30th day of June, 1954, the said Superior Court rendered judgment in plaintiff's favor in said action confirming plaintiff's right to offset the said \$10,483.07 deposit and awarding plaintiff a recovery against Enesco Federal Credit Union in the sum of \$19,516.93 and the said judgment was thereafter entered on July 1, 1954, in Book 2748 at page 6 of Judgments.

That subsequent to the rendering of the said judgment, Enesco Federal Credit Union filed an appeal from the said judgment and on the 11th day of July, 1955, the District Court of Appeal of [7] the State of California, Second Appellate District, Division 1, rendered a decision on the said appeal wherein and whereby it reversed the judgment of the said Superior Court and held that plaintiff was not entitled to recover the \$19,516.93 or to offset the \$10,483.07 of Enesco Federal Credit Union on deposit with plaintiff. That on the 17th day of October, 1955, a judgment was entered by the Superior Court in Book 2979, Page 271-A of Judgments pursuant to the decision of the said District Court of Appeal wherein and whereby plaintiff was

denied any recovery against defendant Enesco Federal Credit Union and defendant Enesco Federal Credit Union was awarded a judgment against plaintiff for the amount of the said deposit, to-wit: \$10,483.07.

XIV.

That a controversy and dispute has arisen between plaintiff and defendant herein and now exists in that the respective parties are contending and asserting as follows:

1. Plaintiff contends and asserts that plaintiff's loss of the said \$30,000.00 is one for which defendant is obligated to reimburse plaintiff under the above described Bankers Blanket Bond, and particularly under the rider to such bond, copy of which is attached hereto and marked Exhibit "D" wherein and whereby the said Bankers Blanket Bond is extended to cover:

"Any loss (1) through accepting, cashing or paying forged or altered checks, drafts, acceptances, withdrawal orders or receipts for the withdrawal of funds, certificates of deposit, letters of credit, warrants, money orders, or orders upon public treasuries, or any of said instruments bearing forged endorsements, acceptances or certifications, or (2) through the establishment of any credit to any customer or the giving of any value on the faith of such checks, drafts, acceptances, orders, receipts, [8] letters of credit, warrants or certificates, or (3) through transferring, paying, or delivering any funds or property or establishing any credit or giv-

ing any value on the faith of any written instructions or advices, directed to the insured, authorizing or acknowledging the transfer, payment, delivery or receipt of funds or property, which instructions or advices purport to have been signed or endorsed by any customer of the insured or by any banking institution but which instructions or advices either bear the forged signature or endorsement or have been altered without the knowledge and consent of such customer or banking institution," * * *

2. The defendant denies and disputes such contention and contends and asserts that there is no liability under the said bond.

Wherefore, plaintiff prays judgment that the above-entitled Court determine and declare the rights and liabilities of the parties hereto in connection with the disputes and controversies herein and that plaintiff recover such other and further relief as to the Court may seem just and proper, together with its costs herein.

McLAUGHLIN & CASEY and
DONALD ARMSTRONG,

/s/ By JAMES A. McLAUGHLIN,
Attorneys for Plaintiff. [9]

Duly Verified. [10]

Affidavit of Service by Mail Attached. [20]

[Endorsed]: Filed Nov. 4, 1955.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Dec. 5, 1955. At: Los Angeles, Calif.

Present: Hon. James M. Carter, District Judge.

Deputy Clerk: L. B. Figg. Reporter: Samuel Goldstein.

Counsel for Plaintiff: James A. McLaughlin.

Counsel for Defendant: Donald E. Ruppe.

Proceedings: For hearing motion of defendant, filed Nov. 25, 1955, to dismiss the action, on the ground that the amended complaint fails to state a claim for the reason that the action has become moot.

It Is Ordered that plaintiff may file an amendment to the complaint within ten days re allegations of jurisdiction, etc., and

It Is Stipulated and Ordered that defendant's motion to dismiss be deemed to apply to the complaint as so amended.

Attorney Ruppe argues in support of motion to dismiss.

It Is Ordered that cause as to said motion to dismiss stand Submitted upon filing of supplemental briefs 10x10x5, defendant to open.

JOHN A. CHILDRESS,
Clerk,

By L. B. FIGG,
Deputy Clerk. [21]

[Title of District Court and Cause.]

AMENDMENT TO AMENDED COMPLAINT
FOR DECLARATORY RELIEF

Comes Now plaintiff, above named, and pursuant to leave granted heretofore by the above-entitled Court on December 5, 1955, files this amendment to plaintiff's Amended Complaint for Declaratory Relief by adding a Paragraph IIA and alleging facts pertaining to jurisdiction as follows:

IIA.

That jurisdiction of the above-entitled Court is conferred by reason of diversity of citizenship of plaintiff and defendant under the provisions of Section 1332(1) of the Jurisdictional Code of the United States, in that plaintiff is a citizen of the State of California and defendant is a citizen of the State of Connecticut and in that the subject matter of the controversy, to-wit, the amount which plaintiff seeks to recover on the surety bond executed by the defendant, exceeds the sum of \$3,000.00 [22] exclusive of interest and costs. The remedial statutes under which plaintiff seeks relief are Sections 2201 and 2202 of the Jurisdictional Code of the United States (Title 28, U.S.C.A.).

Wherefore, plaintiff prays judgment for the relief as prayed for in its Amended Complaint on file herein.

DONALD ARMSTRONG and
McLAUGHLIN & CASEY,

/s/ By JAMES A. McLAUGHLIN,
Attorneys for Plaintiff. [23]

Duly Verified. [24]

Affidavit of Service by Mail Attached. [25]

[Endorsed]: Filed Dec. 9, 1955.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Feb. 29, 1956. At: Los Angeles, Calif.

Present: Hon. James M. Carter, District Judge.

Deputy Clerk: L. B. Figg. Reporter: None.

Counsel for Plaintiff: No appearance.

Counsel for Defendant: No appearance.

Proceedings: The motion of defendant, filed Nov. 25, 1955, to dismiss the action, having been submitted to the Court, and the Court having duly considered it,

It Is Ordered that said motion be, and it hereby is denied.

JOHN A. CHILDRESS,

Clerk,

By L. B. FIGG,

Deputy Clerk. [26]

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT AND
AMENDMENT TO AMENDED COM-
PLAINT FOR DECLARATORY RELIEF

Comes Now defendant, The Aetna Casualty & Surety Company, a corporation, and, appearing for itself alone and not for any other defendant herein, answers plaintiff's Amended Complaint and Amendment to Amended Complaint and denies, admits and alleges:

I.

This answering defendant admits Paragraph I.

II.

This answering defendants admits Paragraph II.

IIA.

This answering defendant admits Paragraph IIA of plaintiff's Amendment to Amended Complaint for Declaratory Relief.

III.

This answering defendant admits Paragraph III.

IV.

This answering defendant admits Paragraph IV.

V.

This answering defendant admits Paragraph V.

VI.

That this answering defendant does not have sufficient information or belief to enable it to answer Paragraph VI, and placing its answer on that ground denies, generally and specifically, said paragraph, and each and every allegation therein contained.

VII.

That this answering defendant does not have sufficient information or belief to enable it to answer Paragraph VII, and placing its answer on that ground denies, generally and specifically, said paragraph, and each and every allegation therein contained.

VIII.

That this answering defendant does not have sufficient information or belief to enable it to answer Paragraph VIII, and placing its answer on that ground denies, generally and specifically, said paragraph, and each and every allegation therein contained.

IX.

That this answering defendant does not have sufficient information or belief to enable it to answer Paragraph IX, and placing its answer on that ground denies, generally and specifically, said paragraph, and each and every allegation therein contained.

X.

That this answering defendant does not have sufficient information or belief to enable it to answer Paragraph X, and placing its answer on that

ground denies, generally and specifically, [28] said paragraph, and each and every allegation therein contained.

XI.

That this answering defendant does not have sufficient information or belief to enable it to answer Paragraph XI, and placing its answer on that ground denies, generally and specifically, said paragraph, and each and every allegation therein contained.

XII.

Answering Paragraph XII of plaintiff's Amended Complaint, this answering defendant denies that plaintiff has been damaged in the sum of \$30,000.00 or in any other sum at all by reason of the alleged payment of \$30,000.00 to Joseph Alden. As to whether or not plaintiff has been reimbursed for any part of said \$30,000.00, answering defendant has no information or belief sufficient to answer and placing its answer on that ground denies, generally and specifically, the remainder of said paragraph and each and every allegation therein contained.

XIII.

This answering defendant admits Paragraph XIII.

XIV.

This answering defendant admits Paragraph XIV.

For A Second, Separate, Further and Distinct Answer and Defense Herein, This Answering Defendant Alleges:

I.

Answering defendant is informed and believes and upon such information and belief avers that plaintiff made an oral agreement with one Joseph Alden, whereby said Joseph Alden came into said plaintiff bank and obtained monies with which to cash checks and that under said arrangements it was agreed that said Joseph Alden could leave a check with plaintiff bank drawn on the Enesco Federal Credit Union and receive from said bank cash. [29] That when he returned the checks which he had cashed that the check of the Enesco Federal Credit Union would be returned to him. That said practice commenced at some time after the 17th day of August, 1950.

That on April 2, 1953, pursuant to said agreement, the said Joseph Alden presented a check for the sum of \$30,000.00 referred to in plaintiff's Complaint and received currency therefrom. That said check was drawn upon the account of Enesco Federal Credit Union which at said time had a deposit with said bank a sum less than \$30,000.00; that by reason of said agreement and arrangement said payment by plaintiff of the sum of \$30,000.00 was a loan of said sum to said Joseph Alden or Enesco Federal Credit Union.

Wherefore, this answering defendant prays that plaintiff take nothing against it by reason of its action herein, and that this answering defendant have judgment against plaintiff for its cost incurred

herein, and for such other and further relief as may seem just and proper.

CRIDER, TILSON & RUPPE,
/s/ By DONALD E. RUPPE,
Attorneys for Defendant, The Aetna Casualty &
Surety Company, a corporation. [30]

Affidavit of Service by Mail Attached. [31]

[Endorsed]: Filed March 20, 1956.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Nov. 28, 1956, at Los Angeles, Calif.

Present: Honorable Ernest A. Tolin, District Judge.

Deputy Clerk: W. E. Payne. Reporter: Virginia Wright.

Counsel for Plaintiff: James A. McLaughlin.

Counsel for Defendant: Garvin F. Shallenberger.

Proceedings: For Court trial. Court convenes herein at 1:40 P.M. All parties are present.

Counsel stipulate to certain facts.

Joseph R. Alden is called, sworn, and testifies for plaintiff.

Plf's Ex. 1, 2, 3, and 4 are marked for ident. and admitted in evidence.

Wm. A. Hood, Gale W. Whitacre, and Anna Sandstrom, witnesses for plaintiff, respectively, are called, sworn, and testify.

Plaintiff rests.

At 3:25 P.M. court recesses. At 3:40 P.M. court reconvenes herein. All parties are present.

Counsel stipulate to certain facts re dating and cashing of checks.

Defendant rests.

At 3:40 P.M. counsel for plaintiff makes closing statement.

At 3:55 P.M. counsel for defendant makes closing statement and concludes at 4 P.M. Counsel for plaintiff replies only briefly.

Court Orders that the matter stand submitted.

At 4:02 P.M. court adjourns.

Exhibits are placed in case file. [32]

JOHN A. CHILDRESS,

Clerk,

By WAYNE E. PAYNE,

Deputy Clerk.

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

Torrance National Bank, a corporate citizen of the State of California, instituted this action against The Aetna Casualty & Surety Company, a corporate citizen of the State of Connecticut, in the Superior Court of the State of California. Defendant procured removal to this Court pursuant to Title 28, U.S.C.A., §1441 (a) (Diversity of citizenship).

Plaintiff seeks to recover upon a Bankers' [33]

Blanket Bond and a rider thereto¹ the loss it sustained in a transaction bottomed upon a worthless check. The parties do not dispute that the law of California is applicable, and that there is no right of recovery upon the bond unless the check is a "forgery."

Enesco Federal Credit Union, a depositor of plaintiff Bank, had since 1949 employed one Joseph Alden as its Treasurer. By both the Act² under

¹ "Rider

" * * *

"1. The attached bond is hereby extended to cover—"Forgery Insuring Clause

"(D) Any loss (1) through accepting cashing or paying forged or altered checks . . . , or (2) through the establishment of any credit to any customer or the giving of any value on the faith of such checks . . . , or (3) through transferring, paying or delivering any funds or Property or establishing any credit or giving any value on the faith of any written instructions or advices, directed to the Insured, authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instruction or advices purport to have been signed or endorsed by any customer of the Insured . . . but which instructions or advices either bear the forged signature or endorsement or have been altered without the knowledge and consent of such customer . . . , or (5) through the payment by the Insured of promissory notes which are payable at the Insured or which purport to be notes payable at the Insured under instructions from any depositor thereof, and which are actually paid by the Insured out of funds on deposit with it, and which prove to be forged or altered or which bear forged endorsements . . . " [34]

² Title 12, U.S.C.A., §§ 1761 et seq.

which Enesco was incorporated and a Resolution of its Board of Directors (a copy of which was furnished to plaintiff), Alden was authorized to sign all the checks of the corporation. In addition to managing the affairs of Enesco, Alden during this period operated a paycheck cashing service upon his employer's premises for his own profit. In order to obtain the necessary funds for this personal business, Alden had a long-standing arrangement with the responsible officers of plaintiff Bank whereby on each Thursday he would leave with the Bank teller an unnumbered check, dated the following day drawn upon the account of his employer and signed by himself as Enesco's Treasurer. Alden would receive in exchange from the Bank, after the close of banking hours, a briefcase containing a substantial sum of money to be used by him the next day in cashing paychecks. The practice was that the check would be held in the teller's cash drawer without entering it in the Bank's records in order to give Alden time to cash paychecks, deposit them in the Bank in another account, and exchange his check on the other account for the Enesco check held by the Bank. Under this procedure no entry of the transaction would appear upon Enesco's monthly bank statement, which was subject to the scrutiny of both the [35] members of Enesco's Board of Directors and the Federal Bank Examiner.

For this special service to Alden the Bank charged him a small weekly fee.

Although the Bank's officials knew the purpose

for which Alden intended to use the money so obtained, they were unaware that Alden had no authority from Enesco's Board of Directors to sign corporate checks for his own check cashing business. At least in part because of the irregular routing of these Thursday checks by the Bank, the Directors of Enesco knew nothing of these weekly transactions between their Treasurer and the Bank.

On Thursday, April 2, 1953, this weekly system suffered a blow. Alden left with the Bank teller a check for \$30,000.00 drawn upon the Enesco account and signed by himself as Treasurer. On that date Enesco's account with the Bank was only slightly in excess of \$10,000.00. On his way from the Bank to the offices of Enesco with the \$30,000.00 received from plaintiff, Alden was robbed of the money.

The Bank thereafter attempted to charge the check against the Enesco account and to collect the \$19,516.93 deficiency by suit. In *Torrance National Bank v. Enesco Federal Credit Union*, 134 Cal. App. 316, 285 P.2d 737 (1955), the California District Court of Appeal decided that the check was not authorized either actually or ostensibly by Enesco, and that the Bank must bear the loss.

The Bank now seeks indemnification under that portion of the bond issued to it by defendant which insures against loss sustained upon "forged" instruments.

Plaintiff contends that the unauthorized [36] signing by an agent of his own name as agent con-

stitutes a "forgery". If this contention is valid, plaintiff's suit correctly seeks indemnification for its loss.

In his legal argument, counsel for the Bank has misconstrued the effect of the famous rule of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64 (1938). That case, in very clear if prolix treatment of the subject, declares that in cases wherein a Federal Court applies state law, it must apply that law as it has been declared by the State whose law is in question. That decision in 1938 has been presaged by a statement of Justice Oliver Wendell Holmes in a dissenting opinion in 1916 when he wrote, "The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi sovereign that can be identified" ³ The sovereign to whose articulate voice this Court must hearken is the State of California. To fail to do so would be to totally disregard *Erie Railroad Co. v. Tompkins*, for we are not to speculate what California should do were it to look to natural justice, or the "brooding omnipresence in the sky", but instead, this Court must look to see what the sovereign State of California has articulated either by statutory enactment or judicial decision.

As early as 1896, in *People v. Bendit*, III Cal. 274, 43 P. 901 (1896), the Supreme Court of California unequivocally articulated the law to be that an instrument signed by the one purporting to have

³ *Southern Pacific Co. v. Jensen*, 37 Sup. Ct. 524, 531; 244 U.S. 205.

executed it is not [37] a "forgery". Plaintiff asserts that this Court should not follow the Bendit decision. He has cited a group of adjudicated cases⁴ which he contends will by analogy lead this Court to declare that under the modern rule, Bendit would be decided differently. ⁵ Counsel's argument that other cases foretell a different result when Cali-

⁴ *People v. Thorn*, 138 Cal App. 714, 33 P.2d 5 (1934) (The California District Court of Appeal has recently distinguished the case from the issue presented here);

People v. McKenna, 11 Cal.2d 327, 79 P.2d 1065 (1938);

People v. McPherson, 6 Cal. App. 266, 91 P.1098 (1907) (substantially different in that defendant actually signed the name of another without authority instead of, as in the case now being decided, signed his own name for an unauthorized purpose.)

Quick Service Box Co. v. St. Paul Mercury Indemnity Co., 95 F.2d 15 (7 Cir. 1938). (The decision there supports plaintiff's theory here.) However, in *Fitzgibbons Boiler Co. v. Employers' Liability Assur. Corp.*, 105 F.2d 893, (2 Cir. 1939), Augustus Hand, J., states that the Quick Service Box Co. case represents a minority view.

⁵ This Court does not overlook that in some situations a federal court, in a diversity suit, may refuse to follow a state supreme court decision. It is not necessary that a case be expressly overruled [38] in order to lose its persuasive force. Cf. *Mason v. American Emery Wheelworks*, — F.2d —, (1 Cir. March 8, 1957). The law is in part an evolutionary process of judicial reasoning. If convinced that the California Supreme Court would no longer follow the Bendit case, then, under the *Erie Railroad Co. v. Tompkins* decision, this Court should apply the same standards which it believes the highest court of this State would use.

fornia again adjudicates the problem directly falls when a survey of recent cases discloses that in 1955, after considering the very authorities here cited by plaintiff, a California [38] Appellate Court followed Bendit in holding that a genuinely made instrument is not a forgery. ⁶Hearing was denied by the Supreme Court of the State.

In the Bendit case, the California Supreme Court declared a rule which forecloses plaintiff from recovery. A District Court of Appeal in California has recently reaffirmed the doctrine of that case, and the California Supreme Court refused to review that decision. The voice of the sovereign to which this Court hearkens in a diversity case has been adequately articulate.

Counsel for defendant will submit Findings of Fact, Conclusions of Law and Judgment for defendant.

Dated: This 28th day of March, 1957.

/s/ ERNEST A. TOLIN,
United States District Judge.

[Endorsed]: Filed March 28, 1957. [39]

⁶Pasadena Investment Co. v. Peerless Casualty Company, 132 Cal. App. 2d 328, 282 Pac. 2d 124 (1955). This decision on local law by a highly respected intermediate court of appeal must be accorded great weight. West v. American Telephone & Telegraph Co., 311 U. S. 223 (1940).

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: April 11, 1957, at Los Angeles, Calif.

Present: Honorable Ernest A. Tolin, District Judge.

Deputy Clerk: W. E. Payne. Reporter: Virginia Wright.

Counsel for Plaintiff: James A. McLaughlin.

Counsel for Defendant: Garvin F. Shellenberger.

Proceedings: For hearing plaintiff's motion to re-open and re-argue law. Court orders said motions of plaintiff denied.

JOHN A. CHILDRESS,
Clerk,

By WAYNE E. PAYNE,
Deputy Clerk. [40]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial in the above entitled Court, the Honorable Ernest A. Tolin, Judge presiding, on November 28, 1956, a jury trial having been expressly waived by the parties, plaintiff appearing by James A. McLaughlin of the firm of McLaughlin & Casey, its attorneys, and defendant appearing by Garvin F. Shallenberger of the firm of Crider, Tilson &

Ruppe, its attorneys, whereupon evidence, both oral and documentary, was offered and received, stipulations were entered into, and the trial of the said action having been completed on November 28, 1956, and the Court having duly considered the evidence, stipulations and arguments, and being fully advised in the premises, now files its findings of fact and conclusions of law, as follows:

Findings of Fact

I.

Plaintiff Torrance National Bank is now and has been at all times herein mentioned, a national banking association organized and existing under and by virtue of the laws of the United States and having its office and principal place of business in the City of Torrance, County of Los Angeles, State of California.

II.

Defendant The Aetna Casualty & Surety Company is now and has been at all times herein mentioned, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, duly qualified to transact business in the State of California.

III.

That plaintiff and defendant have diversity of citizenship in that plaintiff is a citizen of the State of California and defendant is a citizen of the State of Connecticut; that the amount in controversy exceeds the sum of \$3,000.00, exclusive of interest and costs.

IV.

That on June 25, 1948, the defendant signed, sealed, and delivered to plaintiff a written instrument designated "Bankers Blanket Bond"; that said bond was introduced into evidence in the trial of said case and provided, among other things, for indemnification of the plaintiff by the defendant up to the amount of \$10,000.00 in the event of losses falling within the terms and provisions set forth in a rider attached to said bond, which rider also was dated June 25, 1948, and reads in part as follows:

"Forgery Insuring Clause

"(D) Any loss (1) through accepting, cashing or paying forged or altered checks, drafts, acceptances, withdrawal orders or receipts for the withdrawal of funds, certificates of deposit, letters of credit, [42] warrants, money orders, or orders upon public treasuries, or any of said instruments bearing forged endorsements, acceptances or certifications, or (2) through the establishment of any credit to any customer or the giving of any value on the faith of such checks, drafts, acceptances, orders, receipts, letters of credit, warrants or certificates, or (3) through transferring, paying, or delivering any funds or Property or establishing any credit or giving any value on the faith of any written instruction or advices, directed to the Insured, authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instructions or advices purport to have been signed or endorsed by any customer of the Insured

or by any banking institution but which instructions or advices either bear the forged signature or endorsement or have been altered without the knowledge and consent of such customer or banking institution, * * *”

V.

That the said bond, including said rider, was at all times material in full force and effect.

VI.

That Enesco Federal Credit Union was at all times herein mentioned a federal credit union organized by employees of National Supply Company, a corporation, under the laws of the United States of America and having its principal place of business in the City of Torrance, County of Los Angeles, State of California. That at all times herein mentioned, Joseph Alden was Secretary, Treasurer and General Manager of Enesco Federal Credit Union.

VII.

That on the 3rd day of April, 1953, and for a long time [43] prior thereto, Enesco Federal Credit Union maintained a checking account with plaintiff and on said date had on deposit with plaintiff in said account the sum of \$10,483.07. That on the 2nd day of April, 1953, Joseph Alden presented to plaintiff a check dated April 3, 1953, payable to “cash” wherein and whereby plaintiff was directed to pay to the order of “cash” the sum of \$30,000.00. That Joseph Alden signed the said check as Secretary of Enesco Federal Credit Union. That a photo-

static copy of said check, including the stamp thereon which reads "Paid 4-4-53," was introduced into evidence; that plaintiff, upon receiving said check, after business hours on said date of April 2, 1953, delivered to the said Joseph Alden \$30,000.00 in currency, lawful money of the United States.

VIII.

That said check was presented to plaintiff and the currency delivered to said Joseph Alden in accordance with a long-established practice which had prevailed for many years prior to April 2, 1953. This prior practice consisted of the following: Joseph Alden would, on Thursday of each week after the close of business by plaintiff, bring to plaintiff bank a check drawn on Enesco Federal Credit Union's account, signed by Joseph Alden as Secretary of Enesco Federal Credit Union; that Joseph Alden would exchange said check for currency in an amount equal to the face amount of such check, which varied somewhat from week to week although it usually was in an amount which was in excess of that carried in the account of the said Enesco Federal Credit Union; that said Joseph Alden used said currency to cash payroll checks for employees of National Supply Company whose employees had formed the said Enesco Federal Credit Union; that the Enesco Federal Credit Union had not authorized the use of any of its funds to carry on the check-cashing operation hereinafter described; that said Joseph Alden carried on said check-cashing operation on premises assigned to Enesco Federal

Credit Union at the National Supply Company's [44] plant in Torrance, California, and the said Joseph Alden made a charge for cashing each of such payroll checks, and such charges were kept by the said Joseph Alden who was carrying on such check-cashing operation for his own personal gain; that the plaintiff bank knew the purpose for which the currency so secured by said Joseph Alden was being used, but did not know that the said Joseph Alden lacked authority to so use the funds; that plaintiff bank would hold each of such checks drawn on the Enesco Federal Credit Union account, without processing them through their books and records, until the Monday following the presentation of same; that on such Monday the said Joseph Alden would deposit sufficient of the checks that he had cashed to an account he maintained in the said plaintiff bank under the name of Enesco Service Fund; that he would then write a check, payable to plaintiff bank, on the Enesco Service Fund account in a sufficient amount to cover the check that had been presented on the previous Thursday, and the bank would, at that time, return to him the check which he had presented on Thursday drawn on the Enesco Federal Credit Union account; that such checks, although presented on Thursday, always were dated the following day, and were unnumbered; that because of this longstanding practice, neither the bank's records nor the records of Enesco Federal Credit Union reflected the fact that such checks were being drawn on the Enesco Federal Credit Union account.

IX.

That on said date of April 2, 1953, the Enesco Federal Credit Union had a balance of \$10,483.07 in its account at plaintiff bank.

X.

That said Joseph Alden was authorized to draw checks on the Enesco Federal Credit Union account during the entire duration of the above described practice, and he remained so authorized until he was relieved of his position sometime after April 4, 1953. [45]

XI.

After leaving the premises of plaintiff bank on April 2, 1953, said Joseph Alden was robbed of the \$30,000.00 which he had received from said bank; that no part of such currency was ever returned to plaintiff or to Joseph Alden; that plaintiff has, to date, recovered none of the said \$30,000.00 from Enesco Federal Credit Union, or otherwise; that plaintiff instituted an action against Enesco Federal Credit Union in which a final judgment was entered determining that plaintiff bank was not entitled to recover the \$30,000.00, or any portion thereof, from the Enesco Federal Credit Union, or from any funds in its account with plaintiff bank; that said decision is reported in 134 C.A. 2d 316.

XII.

That a controversy and dispute has existed between the plaintiff and defendant in that plaintiff

contended the defendant is obligated under the said rider attached to the said bond to reimburse plaintiff for the amount of its loss up to \$10,000.00 because the check which was presented to plaintiff bank on April 2, 1953, was a forgery; whereas, the defendant denied such contention and maintained that said check was not a forgery and therefore no obligation exists on the part of the defendant to reimburse plaintiff for any of the loss it has sustained.

XIII.

All matters hereinabove set forth which are stated to be findings of fact are hereby declared to be conclusions of law if the same are determined to be more properly conclusions of law.

Conclusions of Law

From the foregoing the Court hereby concludes, and as a matter of law hereby makes the following conclusions of law.

I.

That the check dated April 2, 1953, in the amount of [46] \$30,000.00 which was drawn on the Enesco Federal Credit Union account, and signed by Joseph Alden as Secretary of the Enesco Federal Credit Union, was not a forged instrument.

II.

That plaintiff suffered no loss through the accepting, cashing or paying of any forged check or instrument, or from any other cause which is covered by

the Bankers Blanket Bond dated June 25, 1948, with riders, issued by the defendant to plaintiff.

III.

That plaintiff is not entitled to any judgment against defendant.

IV.

That defendant is entitled to a judgment in its favor and against plaintiff declaring that the defendant has no liability to the plaintiff under said bond, or its riders, and further declaring that no forgery was committed in connection with the said check or instrument dated April 2, 1953.

V.

That defendant is entitled to its costs herein.

Let Judgment Be Entered Accordingly.

Dated May 21, 1957.

/s/ ERNEST A. TOLIN,

Judge. [47]

Affidavit of Service by Mail Attached. [48]

[Endorsed]: Filed June 3, 1957. Entered June 4, 1957.

In The District Court of the United States, Southern District of California, Central Division

No. 15,726-T

TORRANCE NATIONAL BANK, a national
banking association, Plaintiff,

vs.

THE AETNA CASUALTY & SURETY COMPANY, a corporation, Defendant.

JUDGMENT

The above entitled action came on regularly for trial in the above entitled Court, the Honorable Ernest A. Tolin, Judge presiding, on November 28, 1956, a jury trial having been expressly waived by the parties, plaintiff appearing by James A. McLaughlin of the firm of McLaughlin & Casey, its attorneys, and defendant appearing by Garvin F. Shallenberger of the firm of Crider, Tilson & Ruppe', its attorneys, whereupon evidence, both oral and documentary, was offered and received, stipulations were entered into, and the trial of the said action having been completed on November 28, 1956, and the Court having duly considered the evidence, stipulations and arguments, and being fully advised in the premises, and having heretofore signed and filed herein its Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed: [49]

1. That any loss which plaintiff may have sustained by reason of its transactions in connection with that certain check dated April 2, 1953, drawn on the Enesco Federal Credit Union account in plaintiff bank, and signed by Joseph Alden as Secretary of Enesco Federal Credit Union, is not a loss covered by the Bankers Blanket Bond, including the riders thereto, issued by defendant to plaintiff on June 25, 1948; that said instrument did not constitute a forged instrument.

2. That plaintiff is not entitled to any relief or declaration of any rights against the defendant.

3. That defendant is entitled to its costs of suit herein in the sum of \$.

The Clerk Is Ordered to Enter This Decree.

Dated May 21, 1957.

/s/ ERNEST A. TOLIN,
Judge. [50]

Affidavit of Service by Mail Attached. [51]

[Endorsed]: Filed June 3, 1957. Entered June 4, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To The Defendant, The Aetna Casualty & Surety Company, and to Your Attorneys, Crider, Tilson & Ruppe:

You, and Each of You, Will Please Take Notice that Torrance National Bank, a national banking association, the plaintiff in the above-entitled action, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 4th day of June, 1957, in favor of the above-named defendant and against the plaintiff, above named, and from the whole of such judgment.

Dated this 6th day of June, 1957.

McLAUGHLIN & CASEY,

/s/ By JAMES A. McLAUGHLIN,
Attorneys for Plaintiff and
Appellant. [52]

Affidavit of Service by Mail Attached. [53]

[Endorsed]: Filed June 7, 1957.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items below constitute the transcript of record on appeal to the United

The Aetna Casualty & Surety Company, for court trial.

Mr. McLaughlin: The plaintiff is ready.

Mr. Shallenberger: Ready for defendant, your Honor.

The Court: The court has read your memoranda, so you may let those stand as your opening statement, if you like, or you may amplify them, whichever you prefer.

Mr. McLaughlin: Your Honor, I think that for the time being, in view of the fact the opening statements are in, we can profit by taking the testimony of the witnesses. That would be my view.

With that, I would like to call Mr. Joseph Alden.

JOSEPH R. ALDEN

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please take the stand.

Will you state your name, please?

The Witness: Joseph R. Alden; A-l-d-e-n.

Direct Examination

Q. (By Mr. McLaughlin): Mr. Alden, where do you reside?

A. 25114 Woodward, Lomita, California. [3]

Q. During the year of 1953, up to about the 4th or 5th of April, were you employed by the Enesco Federal Credit Union? A. I was.

Q. Will you tell us what that organization was?

(Testimony of Joseph R. Alden.)

A. It was a corporation formed under the federal law as a federal credit union.

Q. That was for the benefit of employees of a certain employer, isn't that true?

A. That is true.

Q. What was the name of that employer?

A. The employer was the National Supply Company.

Q. National Supply Company. And Enesco Federal Credit Union had its office in a small building on the premises of the National Supply Company, isn't that right?

A. That is true.

Q. And the general business of Enesco Federal Credit Union or of any of these credit unions is that it is sort of a savings society for the benefit of employees and also makes loans to employees, isn't that right?

A. That is true.

Q. Tell us how long you had worked for that association?

A. Since about the 2nd of June of 1948.

Q. And tell us what your general duties were. What [4] was your title and what were your general duties?

A. My title varied, but I was the general manager of the organization.

Q. Well, you were treasurer, I think, and also as such you were general manager, isn't that right?

A. That is true.

Q. And where did the Enesco Federal Credit Union maintain its bank account?

(Testimony of Joseph R. Alden.)

A. Torrance National Bank in Torrance, California.

Mr. McLaughlin: Mr. Shallenberger, you have seen the signature card, I think?

Mr. Shallenberger: Yes.

Mr. McLaughlin: I have photostats of these. Do you mind if I use the photostats so we don't have to take the County Clerk's?

Mr. Shallenberger: Not at all.

Q. (By Mr. McLaughlin): I show you a photostat of the signature card, and having on the reverse side of the photostat a corporate resolution of Enesco Federal Credit Union indicating who the authorized signers on the account of Enesco Federal Credit Union are.

Now, I ask you if you signed the certification on that as secretary. A. I did.

Q. Also this resolution discloses that Lila M. Alden [5] and Joseph R. Alden were authorized signers. Lila M. Alden was your wife, isn't that right? A. That is right.

Mr. McLaughlin: May we offer this document in evidence as the first exhibit for plaintiff?

The Court: Received.

The Clerk: Plaintiff's 1.

(The document referred to was marked Plaintiff's Exhibit 1 and was received in evidence.)

Q. (By Mr. McLaughlin): I show you another similar resolution and I ask you if again the——

I beg your pardon. This was after April 3rd.

(Testimony of Joseph R. Alden.)

Mr. Alden, I also show you an original of a card dated October 10, 1950, and that indicates that there was an account opened on that date in the name of Enesco Service Fund, does it not?

A. Yes, sir.

Q. And again the signature, the authorized signers on that account were Joseph R. Alden and Lila M. Alden, isn't that right? A. That is right.

Q. Will you tell us what Enesco Service Fund was?

A. That was a personal bank account that I had set up to handle the service that I was rendering to employees of the National Supply Company. [6]

Q. It was your personal account, as distinguished from Enesco Federal Credit Union?

A. That is right.

Q. Were you able to find a photostat of this?

Mr. Shallenberger: If you want to avoid the necessity of having to put in the original documents, it is already in the other file, and I will stipulate that both Mr. and Mrs. Alden were authorized to sign checks on the Enesco Service Fund account at the Torrance National Bank.

Mr. McLaughlin: Thank you very much, Mr. Shallenberger.

And that the card under which this account was opened is dated October 10, 1950?

Mr. Shallenberger: That is fine. If it so dated, I will stipulate to that, yes.

Mr. McLaughlin: Yes. Now, there is another

(Testimony of Joseph R. Alden.)

signature card as to Enesco Service Fund. I think I had better ask Mr. Alden about this.

Q. (By Mr. McLaughlin): Mr. Alden, there is a second signature card dated November 20, 1952. Now, that also relates to that personal account of yours under the name of Enesco Service Fund, isn't that right? A. That card is correct.

Q. And again this adds a new signer to the account, in addition to yourself and Lila M. Alden. You had someone else by the name of Shona Boarts.

A. That is right.

Q. So far as the account was concerned, it wasn't changed so far as the account being a personal account of yours?

A. The account didn't change; just an additional signer.

Mr. McLaughlin: Your Honor, I thought I had—I have up here those two photostats. May I put them in evidence so the record will be complete? They are the photostats of the two cards Mr. Alden has identified.

The Court: Yes.

Mr. McLaughlin: The one dated October 10, 1950, will be the next exhibit, and the one dated November 20, 1952, will be the next.

The Clerk: Plaintiff's Exhibits 2 and 3.

(The documents referred to were marked Plaintiff's Exhibits 2 and 3 and were received in evidence.)

Q. (By Mr. McLaughlin): Now, Mr. Alden, during the year of 1953 and prior thereto you had

(Testimony of Joseph R. Alden.)

been operating a business on the premises where Enesco Federal Credit Union's business was operated, and the business you operated consisted of cashing checks and writing utility money orders in behalf of persons who wanted to pay utility bills through this service, is that right?

A. That is correct.

Q. That was a business that you conducted and you [8] made a certain charge to persons that got that service, and you were permitted to keep that as your own charge, isn't that right?

A. That is right.

Q. That was a business you operated individually, in which Enesco Federal Credit Union got no money or proceeds?

A. That is true.

Q. The cashing of payroll checks for the employees at the National Supply Company was handled on Friday, isn't that right, of each week?

A. Usually on Friday, yes, sir.

Q. Will you explain to the court how you handled the matter of obtaining funds with which to cash those checks of those employees?

A. After banking hours on Thursday I would present a check drawn on the funds of the Enesco Federal Credit Union, signed by myself as treasurer, to the Torrance National Bank. They would give me the amount of cash that was required on the check.

After I had cashed sufficient checks on Friday to redeem that check, I would present the checks, the payroll checks I had cashed, to the Torrance

(Testimony of Joseph R. Alden.)

National Bank and they would return the check to to me.

Q. Now, on the 3rd day of April, or, the 2nd day of April, 1953, which I believe was Thursday, did you present [9] such a check to the teller at the Torrance National Bank in Torrance?

A. I did.

Q. I show you an original and a photostat of that check, and I ask you if that is your signature in the lower right-hand corner over the printed word "Treasurer?"

A. That is my signature. I drew those checks.

Q. There is attached to this check on the upper left-hand corner a little sheet which has indications as to the denominations of currency that you picked up.

Are you able to refresh your recollection as to whether that is correct or not?

A. I would say those sums were correct.

Mr. McLaughlin: Your Honor, may we offer in evidence the photostat of the check that Mr. Alden has just identified?

The Court: Yes.

The Clerk: Plaintiff's—

The Court: It is received.

The Clerk: Plaintiff's Exhibit No. 4.

(The document referred to was marked Plaintiff's Exhibit 4 and was received in evidence.)

Q. (By Mr. McLaughlin): Mr. Alden, on the 2nd of April, it was after 3:00 o'clock when you

(Testimony of Joseph R. Alden.)

got that money at the Torrance National Bank, is that correct? A. That is correct. [10]

Q. And did you put it in any kind of a receptacle?

A. I received the money in a leather briefcase. I did not check the currency. I don't know whether the funds were intact or not, but I received my briefcase supposedly containing that amount of currency.

Q. Tell us where you went and what happened after that.

A. I left the bank, I would approximate about 3:25 or 3:30 and headed toward my office through an alley and down a couple of streets. I was about a half a block away from the main office of the National Supply Company when I was attacked and robbed of the money.

Q. Now, this was the money that you were taking back to Enesco Federal Credit Union to use in cashing those checks? A. That is true.

Q. You never saw that money after these robbers took the money from you?

A. I never saw the money since then.

Mr. McLaughlin: I have no further questions of this witness.

Mr. Shallenberger: What is the date on that check again, April——

Mr. McLaughlin: 3rd.

Mr. Shallenberger: April 3rd of 1953?

Mr. McLaughlin: '53.

Mr. Shallenberger: Thank you. [11]

(Testimony of Joseph R. Alden.)

Cross Examination

Q. (By Mr. Shallenberger): For approximately how long prior to April 3rd or April 2nd of 1953 had you been in the practice of securing money at the Torrance National Bank with which you carried on your check-cashing service?

A. I would say sometime between November of 1948 or January or February of 1949. I couldn't be certain as to that point.

Q. In any event, it is true, isn't it, that at some point you arrived at a situation where, in connection with your activities, you needed to have more money available for your check-cashing activities than was on deposit in the Enesco Federal Credit Union's account?

Mr. McLaughlin: Just a minute. I object to that on the ground it calls for a conclusion and also is—well, it calls for a conclusion.

The Court: Read the question.

(The question was read.)

The Court: Overruled.

The Witness: May I answer?

The Court: You may answer.

The Witness: Yes.

Q. (By Mr. Shallenberger): And when that time arrived, did you speak to any of the officers at the Torrance National [12] Bank with respect to that matter, sir? A. I did.

Q. And can you tell us at this time who it was that you spoke to about the matter?

A. I cannot be certain, but I spoke to the

(Testimony of Joseph R. Alden.)

executive officers, whether singly or jointly I don't know. But it was Mr. Post and Mr. Dinninger. I don't recall at this time which one I spoke to or whether I spoke to them both.

Q. It was either one or both?

A. That is true.

Q. Could you tell us the capacities of those men at the Torrance Bank at that time?

A. As I understand, Mr. Wally Post was the president of the Torrance National Bank. Mr. Robert Dinninger was the vice president and general cashier.

Q. Isn't it true that you explained to them that you needed more money than was on deposit in the Enesco Federal account, that is, the Enesco Federal Credit Union account, and asked their permission to draw a check on that account for an amount which was in excess of what was on deposit?

A. That is correct.

Q. And in that connection did you not also discuss with them and arrive at the understanding with them—strike that.

Isn't it true that you also discussed with them, and the [13] arrangement was arrived at whereby you would give this check for the amount desired to the bank, made out payable to the bank, drawn on the Enesco Federal Credit Union account, with the agreement that that check would be returned to you on the following day, after you brought back to the bank enough of the endorsed checks so that you could deposit them into the Enesco Service

(Testimony of Joseph R. Alden.)

account and then draw a debts payable to the Torrance National Bank?

Mr. McLaughlin: Your Honor, we object on the ground it calls for a conclusion and it is compound. There are so many questions there that I don't think the witness could intelligently answer it.

Maybe I will make a stipulation.

The Court: Sustained on the ground it is compound.

Mr. Shallenberger: You may make a stipulation to what effect, sir?

Mr. McLaughlin: I will offer to stipulate that this matter was handled—that on Thursdays after 3:00 o'clock Mr. Alden would bring a check, similar to the one which is in evidence, to the Torrance National Bank and he would be given currency in the denominations requested by the Torrance National Bank on that day after 3:00, and that the next day he would bring back checks in an amount sufficient to cover the thirty thousand, or whatever the amount of his check was, which would be returned to the bank, and at that time he would [14] pick up this check that he had left with the bank.

Now, does that help you?

Mr. Shallenberger: That doesn't quite go into all the details. Maybe I can draw it out point by point and then establish it was arrived at by a conversation. I think that you don't handle all the details of it in your stipulation, is my only point.

(Testimony of Joseph R. Alden.)

The Court: I think it would be helpful to have it from the witness.

Mr. McLaughlin: All right.

The Court: We are not going to rush you. I might find it necessary to close for the day at 4:00 o'clock, but we have all day tomorrow, all day Friday.

Mr. Shallenberger: I saw Mr. Alden grimace.

Q. (By Mr. Shallenberger): I think we will be finished with you by then, anyway, Mr. Alden.

You had built up a system for the years prior to April of 1953, is it——

Mr. Shallenberger: Is that right, counsel?

Mr. McLaughlin: Yes.

Mr. Shallenberger: Yes.

Q. (By Mr. Shallenberger): ——prior to 1953, whereby you would take a check in a designated amount into the bank on Thursday, wouldn't you, sir? A. That is true. [15]

Q. All right. Now then, in the earlier stages when you were doing this, the amount of the check was \$10,000.00, is that right, sir?

A. It was even lower than that in the beginning. It eventually came to that figure.

Q. Later it became ten thousand and then eventually twenty thousand and eventually thirty thousand, is that correct? A. That is true.

Q. So that by April of 1953 it was up to thirty thousand.

A. That is true.

Q. As part of this system that was being used,

(Testimony of Joseph R. Alden.)

this check would actually be delivered on Friday, but would always be dated—the check would be delivered to the bank, but would be dated as of the next Friday? A. The following day, yes.

Q. Yes. And, actually, your practice was to bring the check in during banking hours and to leave with the teller who handled your transaction a list of the denominations of currency you desired, is that correct? A. That is correct.

Q. And then you would come in on that Thursday after the bank had closed and pick up the currency itself. A. That is correct. [16]

Q. Then you, of course, would go back and then during Friday, during that day you would carry on your check-cashing activities, is that correct, sir? A. Right.

Q. Then you would return to the bank on Friday after you had cashed a sufficient number of checks so that they would total \$30,000.00, and you would deposit those checks the Enesco Service Fund account? A. Correct.

Q. At that time, after having made that deposit, you would then make out a debit slip on the Enesco Service Fund, which was payable to the Torrance National Bank? A. Correct.

Q. Upon giving this debit slip in the amount—to the teller, she would then return to you the check which you had given her on the previous day?

A. That is correct.

Q. And this was the practice that had been

(Testimony of Joseph R. Alden.)

followed for at least two or three years prior to April of 1953? A. That is correct.

Q. And at the time that you initiated the policy of taking out more money than you had in the account of the Enesco Federal Credit Union, you discussed the matter with the bank officers, one or both of them?

Mr. McLaughlin: I object to that on the ground that [17] assumes facts not in evidence. I don't think counsel meant to, but he said "more money than you had in the Enesco Federal Credit Union." You mean more money than the Enesco Federal Credit Union had?

Mr. Shallenberger: I didn't mean that.

Mr. McLaughlin: I didn't think you did.

Mr. Shallenberger: I will reframe the question.

Q. (By Mr. Shallenberger): At the time you initiated this practice and started withdrawing by means of this check more money than there was in the Enesco Federal Credit Union account, you discussed that matter with either Mr. Post or Mr. Dinninger? A. I did.

The Court: Who were they?

Mr. Shallenberger: They were the president and executive vice president—

The Court: Let him answer.

Mr. Shallenberger: Pardon me.

Q. (By Mr. Shallenberger): Who were they?

A. They were the president and vice president and cashier of the Torrance National Bank.

Q. And in the discussion with the gentleman or

(Testimony of Joseph R. Alden.)

gentlemen, that is, either Mr. Post or Mr. Dinninger, or both of them, you arrived at this system which you have just described in your testimony?

A. That is true.

Q. That system was then approved by either Mr. Post or Mr. Dinninger, or both, is that correct?

Mr. McLaughlin: That is objected to as calling for a conclusion. I am not fighting the fact that—I will even offer a stipulation. I don't like to have the witness testify to conclusions, that is the thing.

The Court: He testified to a conclusion when he testified to the positions which they held. But I take it that is not in dispute.

Mr. Shallenberger: No. And I gather, although you don't wish him to testify to it, you do stipulate that they did approve the system as outlined?

Mr. McLaughlin: Yes. That is just what I offered to stipulate to.

Mr. Shallenberger: Fine. Thank you.

Q. (By Mr. Shallenberger): As one additional factor in this system that I think we forgot, there was always a charge made in connection with these weekly transactions, was there not, Mr. Alden?

A. Yes, there was a charge every week.

Q. And by the time that you were withdrawing \$30,000.00 a week, the charge was \$5.00, was it, sir?

A. I can't be positive, but I think it was.

Q. In any event, the charge had gone up as the amount [19] of money that you were withdrawing went up, is that correct, sir?

A. That is true.

(Testimony of Joseph R. Alden.)

Q. And that also was a matter which had been discussed with either Mr. Dinninger or Mr. Post?

A. That is correct.

Q. Now then, the amount of discharge—let's just make it easier—let's confine it to the time period when you were taking out \$30,000.00, that then the amount of this charge, which was then \$5.00, was actually being paid by the funds in the Enesco Service Fund account? A. That is right.

Q. And that was the invariable practice, was it, sir? A. That is correct.

Q. As a matter of fact, the amount of the debit that you would make on the Enesco Service Fund account always included the amount of your check, which at the end was \$30,000.00, plus this additional charge which at that time was \$5.00, is that correct, sir? A. That is right.

Q. Now then, in connection with the Enesco Service Fund account, isn't it true, Mr. Alden, that you told either Mr. Post or Mr. Dinninger, or both of them, that you were setting up this account which was your own account?

Mr. McLaughlin: Just a minute. All right. I have no [20] objection.

The Witness: May I please hear the question?

(The question was read.)

The Witness: I informed them at the time I desired to open the account that because of the objections of the Federal Credit Union auditor I was closing out my account with the Enesco Fed-

(Testimony of Joseph R. Alden.)

eral Credit Union, and I desired to open it up at the Torrance National Bank.

Q. (By Mr. Shallenberger): And you told them it was your own operation, did you not?

A. Yes.

Q. And it was not connected with the Enesco Federal Credit Union? A. I did.

Q. Now then, in connection with the setting up of this arrangement so that you could get this money for the check-cashing activities, you also told either Mr. Post or Mr. Dinninger, or both of them, that you were taking or you were using this money to carry on your own check-cashing activity, did you not, sir? A. I did.

The Court: Was there a charge made to the person whose check was cashed?

The Witness: Yes, sir.

The Court: Who received that charge? [21]

The Witness: I did, sir.

The Court: You mean you personally?

The Witness: I paid all expenses and I received any profit derived.

The Court: Did you ever talk to anyone in a superior position at the Credit Union about it?

The Witness: I did, sir.

The Court: I will leave that for counsel to develop.

Mr. Shallenberger: I didn't hear the last.

The Court: I said I would leave that subject for counsel to develop, if he so desires.

Mr. Shallenberger: Might I have just a moment?

(Testimony of Joseph R. Alden.)

I think I am about finished, but I would just like to check and make sure I have everything covered.

The Court: Surely.

Q. (By Mr. Shallenberger): One other thing, Mr. Alden.

During the course of carrying on this operation in the manner we have described you would, for example, start at the \$10,000.00 plateau for a certain period, and then go up to the \$20,000.00 for a certain period and then go up to the \$30,000.00, is that right, sir? A. That is right.

Q. Every time you increased the amount that you were withdrawing you would always discuss that with either Mr. Post or Mr. Dinninger, or both of them, and in each case they [22] specifically approved of that? A. That is true.

Q. And with respect to the check which you would leave with the bank, when it was returned to you on Friday there was never any stamp or anything to indicate that it had been run through any of the bank's records, was there, sir?

A. I never examined them, but then I don't think that there was.

Q. As a matter of fact, the arrangement was that they were not to put it through the bank's records, but instead were to return it to you on the following day?

Mr. McLaughlin: Objected to as calling for a conclusion.

Q. (By Mr. Shallenberger): Well, in your discussions with Mr. Post or Mr. Dinninger, or both

(Testimony of Joseph R. Alden.)

of them, one of the three of you stated, to which it was assented by the others, that the check would be returned to you the following day and would not be run through the bank's records?

A. It was my understanding that the check would be returned to me upon presentation of sufficient endorsed pay-checks to redeem it.

Q. That was covered in your discussions with Mr. Post or Mr. Dinninger? A. Yes.

Mr. McLaughlin: Objected to as calling for a conclusion. I am a little slow, but the answer was fast. In other words, [23] he is being asked if these things were so, and he just says "Yes," and I think we ought to have the substance of the conversation, if it was said.

The Court: Of course, it is cross examination. It would be more helpful if we could have the substance of the conversation.

Do you want to probe for a little more detail?

Mr. Shallenberger: Well, all right. I will just ask it this way.

Q. (By Mr. Shallenberger): During the times when you discussed this with Mr. Dinninger or Mr. Post, or both of them, didn't you in substance say, or didn't they in substance say, "And this check that you bring in on Thursday, we will return it to you on Friday when you make the debit on the service fund account, and the check will not be run through the bank records?" Was that just the substance of the conversation? Isn't that a fair statement as to its substance?

(Testimony of Joseph R. Alden.)

A. Well, I can't recall the exact conversation. I would say that—I had been in the practice of presenting this check, so when it came to the point which I had to have more money than was on deposit in the Credit Union account, they said, "Well, just leave the check here and when you bring in the checks we will—the payroll checks—we will return you your regular Enesco Federal Credit Union [24] check."

I don't know if that is the information needed. That is basically what happened.

Q. The checks that you used on these occasions were unnumbered checks, were they not, sir?

A. That is true.

Q. Of course, they were unnumbered checks printed with the Enesco Federal Credit Union name on them? A. That is right.

Q. And did you use unnumbered Enesco Federal Credit Union checks for other purposes besides that that we have been discussing?

A. At times during the course of business of the Enesco Federal Credit Union, where I should happen to spoil a check, which would void a particular number, I would use a blank check and renumber it with that particular number.

Q. Renumbering it by hand, I suppose?

A. By hand or by a numbering machine.

Mr. Shallenberger: There is no question, is there, counsel, but that on the particular occasion here, which is April 2nd of 1953, the balance of the

(Testimony of Joseph R. Alden.)

Enesco Federal Credit Union that you were using Enesco Federal Credit Union unnumbered checks for cashing these checks on Thursday?

A. The subject never came up.

Q. Your answer is you never told anybody?

A. No.

Q. Coming back to the time Mr. Schultz was present and you stated something was said about continuing the activities, let me ask you what was said as to why those activities could not be continued?

A. I couldn't be exactly sure on that. That has been too long ago. I know for years prior to that meeting the federal auditor was in disapproval of it.

Q. Don't you also know at that meeting it was said you couldn't carry that on and use any Enesco Federal Credit Union funds in connection with it?

A. I don't think the subject of Enesco Federal Credit Union funds was even brought up. I couldn't be positive, but I don't recall the subject was ever brought up.

Q. Was there any reason why you would come to the bank after, we will say, September of 1952, to cash, to get money for payroll checks that you used Enesco Federal Credit [28] Union unnumbered checks for, instead of a numbered check?

Mr. Shallenberger: Could I have that question?

(The question was read.)

The Witness: I always used these particular checks.

(Testimony of Joseph R. Alden.)

Q. (By Mr. McLaughlin): When did you start using unnumbered checks on this check-cashing activity? A. I would say probably about 1950.

Q. Where did you have them printed?

A. Automatic Printing Company.

Q. Did you ever disclose to any officers of the Enesco Federal Credit Union you had such supply of checks unnumbered?

A. The chairman of the supervisory committee at the time approved the invoice which paid for them. He also saw them on the supply inventory.

Q. Who was that?

A. That was Mr. James K. Lee.

Q. Did he see those checks as being unnumbered? A. Yes, sir.

Q. Was there a discussion as to what you were to use them for? A. No, not that I recall.

Q. What was the reason that you used unnumbered checks instead of numbered ones?

A. I used them to replace checks that would be voided—I used primarily not the checks, but the journal voucher [29] behind them, where I needed more than one copy of a journal voucher—

Q. I wanted to know why you used them in this check-cashing activity.

A. I don't understand the question. Will you repeat it?

Q. Why did you use unnumbered checks to get this money from the bank for your check-cashing activities?

(Testimony of Joseph R. Alden.)

A. Because the Federal Credit Union law does not permit a credit union to cash checks.

Q. In other words, the credit union had no power under the law to have a check-cashing activity?

Mr. Shallenberger: I object to that as calling for a conclusion of the witness.

The Court: Sustained.

Mr. McLaughlin: I asked him why he did it.

The Court: You can ask him why he did it, which would call for his own reason, and not for the legal considerations which might or might not have——

Q. (By Mr. McLaughlin): You stated the reason you used the unnumbered checks was because the federal law did not permit the cashing of checks as an activity of a credit union, is that right?

A. That is right.

Q. Was it for the purpose, in your mind was your [30] purpose to conceal this check-cashing activity from somebody, by using unnumbered checks?

A. Not specifically to conceal it, but just as a matter of convenience.

Q. Well, whose convenience?

A. The credit union.

Q. In other words, for the convenience of the Enesco Federal Credit Union?

A. That is right.

Q. Now, you stated that a Mr. Lee knew about the invoices on these unnumbered checks. Did you

(Testimony of Joseph R. Alden.)

ever tell Mr. Lee that you were using unnumbered checks for the purpose of getting money to cash your payroll checks?

A. I didn't discuss with him what I used any checks for.

The Court: What was the convenience that the credit union received from the use of unnumbered checks in these transactions?

The Witness: Mr. Schultz, the federal auditor, was objecting to it. The previous board of directors had instructed me that if I could make arrangements to cash checks by which the credit union was benefiting, that whatever arrangements I made were satisfactory.

But then by using a regular numbered check I would either have to show them as void checks and destroy them, so I just used unnumbered checks, which I didn't have to account for on [31] the books, because, according to our bookkeeping system, we had to account for each number.

Q. (By Mr. McLaughlin): Mr. Alden, was that discussion had, that you just related, with any officer of the Enesco Federal Credit Union?

A. It seems that it was, but then I couldn't be positive.

Q. Well, do you have any idea as to whom you had such a discussion with?

A. I would say probably Mr. Charles Shepherd, Mr. Bernard Hadden, probably Mathew La Beau. I couldn't be positive.

(Testimony of Joseph R. Alden.)

Q. Tell us what year that discussion took place and who was present, if you know.

A. I couldn't say. It was sometime between the period of 1949 and 1952, and I wouldn't have the slightest idea who might have been present.

Q. Now, is it your testimony during 1949 you were using unnumbered checks to get money out of the account of the Enesco Federal Credit Union?

A. I couldn't be specific as to the date. I would say that would be right. I can't be absolutely positive.

Q. In 1949 were you overdrawing on the account of the Enesco Credit Union to use in any check-cashing activities?

A. I couldn't say, without looking at the credit union [32] or the bank records.

Q. Do you know whether you were in 1950 or '51?

A. I would say I probably was, but I couldn't be certain. I don't know the exact date because I wouldn't know I was overdrawn the date this particular check came into the picture.

Q. You mean you wouldn't know whether Enesco Federal Credit Union was overdrawn?

A. That is correct.

Q. You kept their records, you knew what money they had, didn't you?

A. At the end of each month; whenever I made a financial statement.

Q. After this discussion in 1952 that you mentioned, where Mr. Schultz told you that the check-

(Testimony of Joseph R. Alden.)

cashing activity could not be a part of Enesco's business, what change, if any, did you make in the operations of check-cashing anywhere?

A. The only change I can recall is that I transferred my Enesco Service Fund account from an individual account in the Enesco Federal Credit Union to a private account in the Torrance National Bank.

Q. Now, you say you had an Enesco Federal Credit Union—or Enesco Service account with Enesco Federal Credit Union before then?

A. That is correct. [33]

Q. What you mean is that you mingled and used money in an account that was sort of an account that you kept, a record showing what moneys you were debited with, isn't that right?

A. That is correct.

Q. That was on account of these check-cashing activities, wasn't it? A. That is correct.

Q. When you were told that could no longer be a part of the business in any way of the Enesco Federal Credit Union, you opened the account or you shifted this account over to the Torrance National Bank under the name of Enesco Service Fund, didn't you? A. That is right.

Q. Now, when you did that, you didn't draw any of these checks that you would get money on the Enesco Service Fund for use in check-cashing, did you?

The Witness: May I hear that question?

(The question was read.)

(Testimony of Joseph R. Alden.)

Q. (By Mr. McLaughlin): That isn't quite clear.

A. I made a share withdrawal. This was a share account in the Enesco Federal Credit Union. I made a share withdrawal from my total account and turned around——

Q. You closed it out with the Enesco Federal Credit Union? [34]

A. I closed it out with the Enesco Federal Credit Union and transferred that money to the Torrance National Bank.

Q. And this account you opened under "Enesco Service Fund?"

A. Yes.

Q. Did you ever cash any checks or draw any checks on Enesco Service Fund, to get this money for payroll?

A. No, sir.

Q. Why didn't you use that account?

Mr. Shallenberger: I will object as being immaterial.

The Court: Sustained.

Mr. McLaughlin: Your Honor, he has opened up a lot of questions here, and this witness, of course, is not too willing a witness on these particular subjects. I think it is very proper in this case to find out whether or not this man's charges against the bank officers, that they knew, and that the officers of Enesco knew he was handling this this way, I think we have a right to go into it. It is not a natural transaction.

The Court: I will set aside the ruling. You may inquire.

The Witness: What was the question?

(Testimony of Joseph R. Alden.)

(The record was read.)

The Witness: There was insufficient funds in the account. [35] It only ran a balance of around one to three thousand dollars.

Q. (By Mr. McLaughlin): When you would bring the checks you had gotten in the cashing of the employees' checks back to the bank, you would deposit them in the service fund account, wouldn't you? A. That is right.

Q. The balance would be much more than you just mentioned, wouldn't that be true?

A. That is true.

Q. And you were during the last several months before April 3rd overdrawing the Enesco Federal Credit Union account, were you not?

A. That is true.

Q. Had the bank told you you couldn't overdraw your own personal account?

A. No, they hadn't.

Q. Now, you testified you told some officer of the bank that the Enesco Service Fund was your personal account, as distinguished from an auxiliary account of the Enesco Credit Union.

Will you tell us whom you told and when?

A. I can't tell you the exact date. I told them at the time I was opening the account, either Mr. Dinninger or Mr. Post, that was my account I handled my money order and check-cashing [36] service through.

Q. That is the account you told them you were

(Testimony of Joseph R. Alden.)

handling your check-cashing and money orders through? A. Yes.

Q. Did you ever tell them you were drawing funds of the Enesco Federal Credit Union on checks of the Enesco Federal Credit Union for that purpose?

Mr. Shallenberger: I will object on the ground it is an attempt to impeach his own witness.

Mr. McLaughlin: He opened the subject, your Honor. He went way beyond my examination.

I am in the position where the things he has asked this witness I have to find out about, because he said the witness has charged the bank and the officers and everybody with knowledge of the fact he was using this method of getting money with their permission, and I think the only way we can get at this is to inquire into it.

The Court: Overruled. Read the question.

(The question was read.)

Q. (By Mr. McLaughlin): For the purpose of cashing your checks.

A. Did I ever tell the officers of the bank, do you mean, Mr. McLaughlin?

Q. Yes.

A. I told them the purpose. I told them I needed this [37] money to cash checks. They saw the check that I was using. I didn't tell them this was a check of the Enesco Federal Credit Union.

I said, "This is—I want to draw \$30,000.00 on this check."

(Testimony of Joseph R. Alden.)

Q. You presented a check on the Enesco Credit Union on every occasion, didn't you?

A. That is correct.

Q. And you had told the bank before that you were opening up an Enesco Service Fund account to handle your check-cashing?

A. That is right.

Q. You said you told either Mr. Post or Mr. Dinninger, when you opened up the Enesco Service Fund, that was the account to be used in check-cashing, is that right?

A. That is right.

Q. You did cash checks on the Enesco Federal Credit Union frequently for cash, for the use of the Enesco Federal Credit Union, didn't you?

A. That is right.

Q. On the date that you would bring this check, on Thursday, to the bank, was there any reason why you waited until after 3:00 o'clock to pick up the money?

A. Yes, there were a couple of reasons. One, for the protection of the money. The other, because up until 3:00 [38] o'clock the bank wouldn't know whether they had that much money available in cash to give to me.

Q. Who stated that latter reason to you?

A. Well, just a common discussion. I can't say whether it was Mr. Dinninger or Mr. Post. But it was a mutual agreement, until the bank closing hours they didn't know whether they would have sufficient—that sufficient amount of currency to give to me.

(Testimony of Joseph R. Alden.)

Q. Wasn't the reason why you got the currency after 3:00 o'clock was because you personally did not wish that to be entered on the bank's records as an April 2nd, or as a Thursday transaction?

A. I personally didn't care how the bank entered it.

Q. If the bank entered it on its records, did you know whether or not it would then show on the ledger sheets that would be returned to the Enesco Federal Credit Union, that you had drawn that money out?

A. If it had shown on the ledger sheets, it would have been a matter of indifference to me. I would have had a deposit the next day to cover it, anyway.

Q. Did you ever on any occasion have any of the ledger sheets show you had drawn out any money for the use of these week-end check-cashing activities?

A. I think there have been occasions, but I couldn't be positive without examining the bank statements. [39]

Q. Those occasions were prior to the time that you were told to disassociate that activity, isn't that right?

A. Oh, that I couldn't say without examining the records.

Q. In each instance that you cashed a check and you picked up that currency on Thursday afternoon, you came back and got the check the next day.

A. The next day or Saturday, when the bank was open on Saturday.

(Testimony of Joseph R. Alden.)

Q. You picked up the check so it wouldn't be returned as one of the checks that had been cashed by the Enesco Federal Credit Union, isn't that right?

A. That is correct.

Q. Was there any reason why you didn't want it to appear and be returned as one of the checks?

Mr. Shallenberger: I will object to that on the ground it is assuming facts not in evidence.

Mr. McLaughlin: I will withdraw the question.

Q. (By Mr. McLaughlin): If you can, will you please tell us the time that you told either Mr. Post or Mr. Dinninger that you were getting these \$30,000.00 sums for use in your personal business of check-cashing?

A. Well, that would be a hard question to answer because they knew that I was cashing checks on my own personal—as my own personal business from the time I inaugurated, which was in the fall or the winter of 1948 or the spring of [40] 1949.

They knew my check-cashing activity was being conducted as my personal business at that time.

Q. And they knew at that time——

A. That was only two or three thousand dollars at that time.

Q. They knew at that time that it was with the consent of the Enesco Federal Credit Union that you were carrying on that activity, didn't they?

A. That is true.

Q. What I want to know is, when you told them after this discussion with Mr. Schultz, telling you that had to be disassociated, when did you tell

(Testimony of Joseph R. Alden.)

Post or Dinninger that you no longer were carrying that on with the consent of the Enesco Credit Union?

A. I never told them, because that situation never existed. It was Mr. Schultz that disapproved, not the board of directors of the Enesco Federal Credit Union.

Q. Did you ever come to either Mr. Post or Mr. Dinninger after you heard from Mr. Schultz and state, "Now, I am carrying this on as my own independent activity and I am not getting any sponsorship or funds from the Enesco Federal Credit Union?" In substance, did you ever say anything like that to either of them?

A. No, because that situation never existed. [41]

Q. I just want to know whether you did or not.

A. I didn't.

Mr. McLaughlin: All right. I have no further questions.

Recross Examination

Q. (By Mr. Shallenberger): Did I hear correctly that sometimes you wouldn't come back to redeem these checks until Saturday?

A. That is true. It all depended on the pressure of business.

Q. And whenever that would occur, why, you would follow the same procedure of getting the check back from the girl after making your deposit to the service fund account and giving the debit slip, and so forth, is that right?

A. That is correct.

(Testimony of Joseph R. Alden.)

Q. And you did tell Mr. Post and Mr. Dinninger that this money was being used by you in your check-cashing business, didn't you, sir?

A. Certainly.

Mr. Shallenberger: That is all I have.

Redirect Examination

Q. (By Mr. McLaughlin): I have only one question here.

When did you make that statement, Mr. Alden?

A. The statement I was using these funds in my own check-cashing activity? [42]

Q. Yes.

A. When I first went to them to discuss the possibility of securing funds, and to cash checks.

I told them at the time that the board of directors had authorized me to cash checks, because they didn't feel they could afford to pay me the salary they felt I was entitled to. If I could cash checks and pick up a little extra money, that was all right with them.

Q. All I wanted was the year, please.

A. I would say '48 or '49.

Mr. McLaughlin: No further questions.

Mr. Shallenberger: Might I ask one more, your Honor?

The Court: Yes.

Recross Examination

Q. (By Mr. Shallenberger): In that connection, didn't you also have discussions with Mr. Post or Mr. Dinninger, even as late as 1953 and prior to

(Testimony of Joseph R. Alden.)

April 2nd and April 3rd of 1953, in which during the course of the discussion you told them about the fact that this money was being used in your own personal check-cashing activities?

A. I wouldn't say I specifically told them. That is, it was a matter of common knowledge. You don't conduct a business for four years without people knowing what you are doing, to my way of thinking. [43]

Q. Surely. I mean, didn't the point come up during the early part of 1953, when you had under consideration possibly making some other type of arrangement?

A. Because of the antagonism of the federal auditor, I was desiring to make a change in the method I was conducting business, and I discussed it with them at that time.⁵

Q. You discussed that with Post and Mr. Dinninger?

Mr. McLaughlin: I think the answer so far is not intelligible. It is a conclusion. I move to strike it. If there is a discussion, I think we should have the words.

The Court: Let's have it read.

(The question was read.)

Mr. Shallenberger: Now I think it is my next question to bring out what the discussion was insofar as it relates to the point.

Mr. McLaughlin: I will withdraw the motion. The main thing was it didn't tell anything yet.

(Testimony of Joseph R. Alden.)

Mr. Shallenberger: That is true. I go along with you.

Q. (By Mr. Shallenberger): During the course of this discussion—we don't want to go into the whole business, Mr. Alden,—isn't it true that you told again Mr. Post or Mr. Dinninger, or both of them, that this money that you were getting was being used by you in your own check-cashing activities? A. That is correct. [44]

Q. You may not have said it precisely the way I put it, but you did say that during the course of these discussions, in that substance, is that right, sir? A. That is right.

Mr. Shallenberger: All right.

Redirect Examination

Q. (By Mr. McLaughlin): In view of that, I would like to ask a couple of questions. This is important.

Mr. Alden, you have been asked whether during the early part of 1953 you told Mr. Dinninger or Mr. Post that the money you were getting on these Enesco Federal Credit Union checks was being used by you in your personal check-cashing activities.

Please tell us when that discussion took place in 1953.

A. I would say practically any Friday—any Thursday you might want to pick out, because I discussed these things with them practically every week.

(Testimony of Joseph R. Alden.)

Q. Tell us what you said on any discussion you remember in 1953. Tell us what you told them.

A. The big discussion was primarily to find different methods of securing the money.

Q. That doesn't tell us anything. I am asking you to give the substance of the words you used in telling Mr. Post or Mr. Dinninger that this money was being used by you in [45] your personal check-cashing activities, as distinguished from an activity of the Enesco Federal Credit Union?

A. In the particular time you specify, I can't say I said it was my personal activity, because they knew it was my personal activity, in the beginning.

Mr. Shallenberger: I move to strike the part "because they knew" as a conclusion and not responsive.

The Court: Granted.

Mr. Shallenberger: I have no further questions. Just a minute, please.

Recross Examination

Q. (By Mr. Shallenberger): These discussions in early '53 with Mr. Post or Mr. Dinninger related to the fact that you and either Mr. Post or Mr. Dinninger, or both of them, were trying to find another way to carry on your check-cashing activities, is that right, sir? A. That is right.

Q. And of necessity during those conversations it would be brought up as to the different possible

(Testimony of Joseph R. Alden.)

methods that might be adopted for carrying the check-cashing activity on, is that right, sir?

A. That is right.

Q. Among those was thought up the idea that you might be made an employee of the bank, and various schemes such as that were discussed, is that right?

A. That is true. [46]

Mr. Shallenberger: That is all.

Mr. McLaughlin: I am sorry, your Honor, but these are new subjects every time.

The Court: I am not stopping you.

Mr. McLaughlin: I know, but I really feel——

Mr. Shallenberger: You are acting very lawyer-like.

Redirect Examination

Q. (By Mr. McLaughlin): Mr. Alden, what was said at these discussions as to why anyone was trying to find a new method of financing your check-cashing activities?

A. I had informed the bank that the government auditor was not particularly satisfied with the idea of me cashing checks——

Q. Let's stop there. Go ahead and finish your answer; go ahead.

A. I have no further answer.

Q. All right. Now, when did you make that statement to the bank and to whom did you make it?

A. That is difficult to answer because from the time that Mr. Schultz became aware I was cashing checks he openly expressed his disapproval of it for several years, and from the time that he ex-

(Testimony of Joseph R. Alden.)

pressed his disapproval I was constantly trying to find some other way to handle it that would meet with his approval. [47]

Q. I am not asking what you were trying to do. You said there were discussions with the bank. I want to know when those discussions took place, when you were discussing with them of finding another way.

A. From the time Mr. Schultz expressed his disapproval, is the only way I could answer that, because I can't give any specific dates any time that entered my mind.

Q. Who did you discuss that with in the bank?

A. Mr. Post and Mr. Dinninger.

Q. Tell us what suggestions were made by anybody, as to how this could be handled.

A. We suggested delivery of the funds from the bank to the credit union office, putting me on the payroll as a bank messenger or an outside collector, having the bank deliver the money from the California Bank in Los Angeles down to my office and charging it through the—I presume charging it through the Torrance National Bank.

There were a number of different discussions held at various times and different methods discussed.

Q. When was the first one? Let's get them down in order.

A. I can't pick that up. That has been too long ago.

Q. What year was the first discussion?

(Testimony of Joseph R. Alden.)

A. I would say probably 1949 or 1950.

Q. Who was present at that time? [48]

A. Well, myself and one of the bank officers or maybe both of them; I can't tell you.

Q. What was said with respect to any plans on that occasion? A. I couldn't tell you that.

Q. When is the first time you remember when something was said?

A. I can't remember any specific detail of any particular discussion. These were discussions that were going on constantly.

Q. Did any of the bank officers say to you that you had no right to be taking this \$30,000.00 on the Enesco Federal Credit Union account weekly?

A. No, sir.

Q. Did you tell them you had no right to be doing it? A. No, sir.

Q. What was said as to why you needed another method then?

A. I told them that the federal examiner did not approve of it, and I was trying to find some more satisfactory arrangement to handle the thing.

Q. Did you tell them that the officers of the Enesco Federal Credit Union didn't approve of it?

A. I don't think any of the officers didn't approve of it.

Q. Did you tell them any of the officers ever told you [49] you couldn't use the funds?

A. I did not.

Mr. McLaughlin: No further questions.

(Testimony of Joseph R. Alden.)

The Court: What was it that the auditor was disapproving of?

The Witness: The fact that Federal Credit Unions are limited to accepting shares and making loans to their members, and any other activity, regardless of what it might be, should not be conducted in a Federal Credit Union office.

The Court: Did the auditor ever object to your use of credit union funds for this temporary borrowing?

The Witness: So far as I know, he didn't realize it was going on. You see, by the use of these unnumbered checks, they were destroyed, and they never showed up on the books.

When I started the later date of using unnumbered checks, at the times when the checks were put through the bank they were just shown as a charge against the petty cash fund, and he never questioned the fact the petty cash fund sometimes went up to \$5,000.00 or so and was repaid the next day, because the credit union has authority to make petty cash loans of that size; a change in funds, I should say, into a petty cash fund.

The Court: Anything further?

Mr. Shallenberger: Nothing further.

Mr. McLaughlin: I would like to fix the fact that petty [50] cash funds—I think Mr. Alden will admit that was the original method he used before he started the method of bringing the check in and getting the cash.

(Testimony of Joseph R. Alden.)

The Witness: That is true, and it could be continued that way from then on.

Mr. McLaughlin: I move to strike the last part as a conclusion, "it could be."

The Court: Granted.

Mr. McLaughlin: I have no further questions.

The Witness: May I be excused as a witness?

The Court: This witness wishes to be excused.

Mr. Shallenberger: He may be excused, so far as I am concerned, your Honor.

Mr. McLaughlin: Yes.

The Court: You may be excused.

The Witness: Thank you, sir. I will be available for call if I am needed.

(Witness excused.)

Mr. McLaughlin: I would like to call Mr. Hood.

WILLIAM A. HOOD

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please take the stand.

Will you state your name, please?

The Witness: William A. Hood. [51]

Direct Examination

Q. (By Mr. McLaughlin): What is your occupation, Mr. Hood?

A. I work in the production control office.

Q. Of the National Supply Company?

A. Correct.

(Testimony of William A. Hood.)

Q. You are an officer and a director of the Enesco Federal Credit Union, also, are you not?

A. That is correct.

Q. How long have you been a director of the Enesco Federal Credit Union?

A. I was elected to the board in 1952.

Q. And you have been a director continuously since that time? A. That is correct.

Q. Do you hold any office with that association?

A. At the present time I am the president.

Q. Incidentally, did you bring the minute book with you? A. Yes, I did.

Q. I will hand you the minute book——

A. No, that is not the minute book. I am sorry. It is the bylaws.

Q. I notice this is in two volumes. I think the one that is through '50 I will ask you about first.

Would you turn to the minutes of September 30, 1948, first, Mr. Hood? A. September 30, 1948?

Q. Yes. A. (Witness complies.)

Mr. Shallenberger: I haven't seen any of these minutes, Mr. McLaughlin.

Mr. McLaughlin: Well, there are excerpts of them in the exhibit file you looked at before. If you would like to stand up here, Mr. Shallenberger, I will let you see these,——

Mr. Shallenberger: All right.

Mr. McLaughlin: ——if you don't mind, at the same time.

Mr. Shallenberger: No. That is quite all right.

(Testimony of William A. Hood.)

Q. (By Mr. McLaughlin): Did you find that, Mr. Hood?

A. Is that the 30th of September, 1948?

Q. Yes. A. Yes.

Q. Would you read from that book as to a resolution regarding Joseph Alden and the cashing of checks? Was there a resolution adopted at that time?

A. (Reading) "It was resolved that Joseph R. and Lila Alden be permitted to sell drafts at the Credit Union office for the convenience of Credit Union members."

Q. There is another paragraph. [53]

A. (Reading) "As a result of increased services to be rendered at the Credit Union office, it was approved that, effective October 11, 1948 the business hours would be: 11:00 a.m. to 1:00 p.m.,——"

Q. Does that show "Monday through Thursday?"

A. Yes, "Monday through Thursday,"——

Q. "11:00 a.m. to 1:00 p.m.—3:30 to 5:00 p.m.?"

A. Yes.

Q. And on Friday 8:00 a.m. to 1:00 p.m. and 3:30 to 5:00 p.m.? A. That is correct.

Q. And then do the words appear, "thus affording service to Swing and Graveyard Shifts as well as the Day Shift?" A. Correct.

Mr. McLaughlin: May we offer this excerpt, your Honor, so we won't have to take the minutes? Mr. Shallenberger has seen it. It is exactly as we have read it.

(Testimony of William A. Hood.)

The Court: Any objection?

Mr. Shallenberger: No objection.

The Court: Received.

The Clerk: Plaintiff's Exhibit No. 5.

(The document referred to was marked Plaintiff's Exhibit 5 and was received in evidence.)

Q. (By Mr. McLaughlin): Now, Mr. Hood, would you turn [54] to the minutes of August 17, 1950, please? A. (Witness complies.)

Q. Would you like me to help you?

A. They should be right here.

Q. Now, I direct your attention to a portion of those minutes which is under Paragraph 3, and I wonder if you would please read that paragraph, Mr. Hood.

A. (Reading) "It was resolved to authorize the present treasurer and assistant treasurer to continue the operation of their check-cashing and money order services, they to assume all liability and expense and retain any profits in connection therewith."

Mr. McLaughlin: Your Honor, I have not had him read the rest. The rest of the minutes are not pertinent to anything here.

Do you mind if I offer the excerpt in evidence, just directing attention to 3? If you wish, you can compare the rest.

Mr. Shallenberger: No. That is all right. I have no objection.

Mr. McLaughlin: Thank you.

(Testimony of William A. Hood.)

The Court: Received.

The Clerk: Plaintiff's Exhibit No. 6.

(The document referred to was marked Plaintiff's Exhibit 6 and was received in evidence.) [55]

Q. (By Mr. McLaughlin): Now, Mr. Hood, do you recall having been present at any discussions about the time of those minutes that you just read concerning this activity of check-cashing, any discussion with Mr. Alden? A. The one of March.

Q. That was in the next year?

A. No, it would be in '53.

Q. Yes. That is what I mean.

A. Yes, sir.

Q. I beg your pardon. Three years later, March '53. Would you turn to that?

I beg your pardon. I think that is the one there is no write-up on.

A. That is correct. There are no minutes of that meeting.

Q. Were you present at a meeting on March 7, 1953? A. That I was.

Q. Incidentally, who was it during the year 1953 that was charged with the duty of writing up the minutes of the directors? A. Mr. Alden.

Q. Joseph Alden? A. Correct.

Q. So far as you have been able to determine the minutes of that meeting were never written up by Mr. Alden, [56] is that correct?

A. That is correct. We have been unable to find them.

(Testimony of William A. Hood.)

Q. Will you tell us who was present, what directors were present at that meeting?

A. Well, there was Mr. Whitacre, Mr. Cook and Mr. Miller—may I use the minutes previous to that, to remember their names?

Q. So far as I am concerned you can, Mr. Hood.

A. Mr. Schultz, the examiner, was there; I recall that.

Q. Who was Mr. Schultz?

A. He was the federal examiner.

Q. Go ahead. What other directors were there?

A. Mr. Peverly and Mr. Alden, Mr. Hadden, Mr. Hood, Mr. Miller.

Q. Was there a quorum present at that meeting?

A. There was.

Q. Now tell us in substance the discussion that took place regarding the check-cashing activity and, as near as you can recall, tell us who said the things you are going to testify to.

Mr. Shallenberger: I will object to the question, your Honor, on the ground it is immaterial, and hearsay.

The Court: Read the question.

(The question was read.)

Mr. McLaughlin: Could I be heard? [57]

The Court: Yes.

Mr. McLaughlin: It is the question of forgery and authority. It goes to the very essence of this lawsuit. If we are entitled to recover on this bond we are suing on, we have to show a forgery within the meaning of that.

(Testimony of William A. Hood.)

Mr. Alden, in some of his testimony, has indicated this was all right. I want to show it was specifically beyond his authority and contrary to his authorization, this check that he cashed. That is the purpose of it.

The Court: Overruled: We will receive the evidence.

Q. (By Mr. McLaughlin): Go ahead, Mr. Hood.

A. That evening we decided we would put an end to this check-cashing service. We were assured that night at the board meeting by Mr. Alden himself that the credit union was connected in no way, shape or form with it, and the money he obtained, he claimed he was a bank messenger and was working——

Q. Did he say he was a bonded messenger for the bank? A. Bonded messenger.

The Court: I think we should have this in the witness' words.

Q. (By Mr. McLaughlin): Tell us in substance the questions and the statements that you people made, and the questions and the statements he made, Mr. Hood.

A. Well, it was that the service that he was rendering was doing more harm to our credit union than what he was doing [58] good, and so the board of directors felt at that time they should stop it.

He had been—had supplies bought ahead of time on some of his envelopes and letterheads, and so on and so forth, for his business that he had in there, and he asked if he could go for a period of time

(Testimony of William A. Hood.)

yet, until he used up those supplies which he had an inventory on.

At that time he was asked again about the funds, and he assured us that he was a bonded messenger from the bank.

Q. I would like to have you say who asked him, and more, in what words, how that came up as to what the funds he was using were, if you can.

A. As I recall, I think it was Mr. Whitacre that asked him, the president at that time of the credit union.

Q. Can you tell us in substance how it was asked or what Mr. Whitacre said to him?

A. All I can say is I know he was asked, I mean in a way that we were trying to put a stop to it. We didn't want it to go on anymore.

And he assured us at that time that he had no—the credit union had no chance of trouble or anything from what he was doing because he was clear, that was his end of it and he was totally responsible for the check-cashing service that he was rendering.

Q. At that time, Mr. Hood, had it ever been brought to [59] your attention that money was being obtained from the Torrance National Bank by checks signed by Mr. Alden, on which he would withdraw money and use it in his check-cashing activities? A. No.

Q. Did you know that was going on?

A. No.

(Testimony of William A. Hood.)

Q. Was there any discussion of that subject, of any such checks, at that meeting? A. No.

Q. Did you know there were unnumbered checks that were being delivered to the bank and on the next day Mr. Alden would pick up that check from the bank by delivering payroll checks which he had cashed on that day or the day before?

A. I did not. The first I heard of that was at the robbery.

Q. Was at what?

A. The first I ever heard of that was the night—the day of the robbery; that was the first time I had heard of it.

Q. As far as you know, the minutes of that March 17, 1953 meeting were never written up by Mr. Alden or anyone else?

A. No, so far as I know they were not written up.

Mr. McLaughlin: I have no further questions.

Cross Examination

Q. (By Mr. Shallenberger): There is no question but what Mr. Alden had been signing checks for the Enesco Federal Credit Union for a good many years prior to April of 1953?

A. That is true.

Mr. McLaughlin: Just a minute. That is too vague, I think. In other words, if counsel means checks generally or if he means these checks for the payroll, I think, should be tied down.

(Testimony of William A. Hood.)

Mr. Shallenberger: You concede he had authority to cash checks?

Mr. McLaughlin: For the benefit of the Enesco Federal Credit Union, for their activities; the signature cards so show.

Mr. Shallenberger: All right. Then you are not raising any question as to the validity of the signature cards, are you?

Mr. McLaughlin: No. I put them in evidence.

Mr. Shallenberger: That is all I have.

Mr. McLaughlin: No further questions, Mr. Hood.

(Witness excused.)

Mr. McLaughlin: Mr. Whitacre. [61]

GALE W. WHITACRE

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please take the stand.

Will you state your name, sir?

The Witness: Gale W. Whitacre.

Direct Examination

Q. (By Mr. McLaughlin): What is your present occupation?

A. I am license and tax inspector and police officer.

Q. In 1953 and prior thereto by whom were you employed?

A. Early part of 1953, National Supply Company.

(Testimony of Gale W. Whitacre.)

Q. Were you at any time connected with the Enesco Federal Credit Union as an officer or director? A. Yes.

Q. Tell us what period of time you were a director of that company.

A. I was elected to the board of directors in January of 1953; elected president in February of 1953.

Q. Were you present at the meeting of the board of directors that Mr. Hood just mentioned in March, 1953? A. Yes, sir.

Q. Will you tell us, according to your recollection, who was present?

A. Leonard Hadden, Mr. Peverly, Mr. Aubrey Cook, Mr. [62] Hood, myself, and Federal Auditor Mr. Robert Schultz. Seven members all together.

Q. Prior to that meeting, had you been present at any discussions with Mr. Alden concerning this check-cashing activity that he was carrying on on the premises of the Enesco Federal Credit Union?

A. Yes.

Q. Were you present at any discussion when Alden was present?

A. The first discussion I had with Mr. Alden pertaining to his activities, other than the credit union, was after I was elected president in February and before the March board meeting.

Q. All right. Now, will you state where that took place and who was present?

A. In the credit union office.

Q. Where? A. In the credit union office.

(Testimony of Gale W. Whitacre.)

Q. Who was present?

A. Mr. Alden and two other employees in the credit union.

Q. Now tell us what was said about this check-cashing activity.

Mr. Shallenberger: I would like to object on the ground it is immaterial and hearsay. [63]

Mr. McLaughlin: It is the same thing again; it is authority, your Honor.

The Court: Overruled.

The Witness: I wouldn't say it was anything particularly that was said about the check-cashing service, exclusively, but of his activities on the whole, which I objected to as president of the credit union.

Q. (By Mr. McLaughlin): Well, you haven't told us anything.

A. Well, his activities were check-cashing services, writing money orders, buying license plates, paying bills for people, and etcetera. As such, it was taking up so much of his time and the employees' time that the credit union business was suffering.

Therefore, I objected to his activities, and I told him I was going to take it up with the board of directors.

Q. Did you know he was at that time using Enesco Federal Credit Union checks to get money from the Torrance National Bank to use in those activities?

A. No, sir.

Q. You did not. When did you next have a dis-

(Testimony of Gale W. Whitacre.)

cussion with Mr. Alden? Did you have another one before that meeting?

A. Not to my recollection.

Q. All right. Now, tell us what was said by the directors, and, if you can, tell us who said it and also what was [64] said by Mr. Alden concerning that activity.

Mr. Shallenberger: At that meeting?

Mr. McLaughlin: Yes.

Mr. Shallenberger: May I have the same objection on the grounds of hearsay and it being immaterial?

The Court: Overruled.

The Witness: I believe most of the discussion was carried on by myself in explaining to the board and the federal auditor and discussing with Mr. Alden why I objected to these services which he was rendering, on the grounds that the credit union business was being neglected because they just couldn't take care of everything.

I objected to it because the federal bylaws provide that a credit union cannot perform these services and make a charge. They can perform these services, but they cannot make charges for them. And as such, the credit union was becoming involved or construed as a credit union making these charges and not the Alden enterprises, so to speak.

Also, because the federal examiner objected very strenuously to these enterprises the Aldens were carrying on extra.

(Testimony of Gale W. Whitacre.)

Q. (By Mr. McLaughlin): Incidentally, was Schultz, the examiner, there?

A. Bob Schultz, the federal examiner, was there.

Q. Now, you have told us what you said. Will you tell us what Mr. Alden said on that occasion?

A. Mr. Alden was very upset. He practically begged us to let him continue his money order service, until his current supply which he had purchased—in other words, he had quite a bit of money involved in money orders—until his current supply of money orders was up; he asked us to let him continue. He assured the board of directors that the credit union funds in no way, shape or form were involved in this check-cashing or other enterprises. He also assured us he was a bonded messenger from the Torrance National Bank and that he was currently negotiating, even then, for an armored car to make these money deliveries to the credit union office.

Q. Did you know at that time that he had been using Enesco Federal Credit Union checks to get the money——

A. No, I did not.

Q. Did you know he had a supply of unnumbered checks which he had printed up and was using for that purpose?

A. Not at that time, sir.

Q. When did you learn that?

A. Approximately sometime around April the 4th or 5th.

Q. Of 1953? A. Of 1953; after the robbery.

Q. That was after the robbery?

(Testimony of Gale W. Whitacre.)

A. After the robbery.

Mr. McLaughlin: I have no further questions.

Cross Examination

Q. (By Mr. Shallenberger): I gather, Mr. Whitacre, that the board did say he could continue with his check-cashing activities, until his supplies were used up, at any rate?

A. We told—the board agreed he could continue his money order activities, until his money orders were used up.

Q. In any event, he continued the check-cashing activity after that board meeting?

A. Yes, I believe there would be a payday in there before the robbery.

Q. You knew that he was continuing to do that, didn't you?

A. We knew he was continuing to cash checks, yes.

Mr. Shallenberger: That is all.

Mr. McLaughlin: I have no further questions.

The Witness: May I be excused?

The Court: Yes.

(Witness excused.)

Mr. McLaughlin: Miss Sandstrom.

ANNA SANDSTROM

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please take the stand.

Will you state your name, please? [67]

The Witness: Anna Sandstrom.

Direct Examination

Q. (By Mr. McLaughlin): Where do you reside, Mrs. Sandstrom? A. I live in Torrance.

Q. What is your occupation? A. Teller.

Q. You are now employed by the California Bank? A. That is right.

Q. In Torrance? A. Yes.

Q. That is the bank that was formerly the Torrance National Bank, before it sold its good assets to the California Bank? A. That is right.

Q. You were employed in what capacity by the Torrance National Bank in April of 1953, and prior thereto? A. Teller.

Q. Did you know Joseph Alden?

A. Yes, sir.

Q. Now, you were the teller who would accept the check which he would bring in on Thursday afternoon and count out the currency which would be delivered to him after 3:00 o'clock, isn't that right? A. That is right. [68]

Q. You did perform that function on Thursday, April 2, 1953? A. Yes.

Q. That was the day he was robbed later on.

(Testimony of Anna Sandstrom.)

Incidentally, Mr. Post was the president of that bank at that time, wasn't he? A. Yes, sir.

Q. And he is now deceased?

A. That is right.

Q. Mr. Dinwinger was the cashier and vice president? A. That is right.

Q. And what is his condition?

A. What is his what?

Q. Is he alive or——

A. He is paralyzed; he has had a stroke.

Q. He has had a stroke? A. Yes.

Q. During the period you were handling these checks that Mr. Alden would bring, these checks of the Enesco Federal Credit Union, did you know that Mr. Alden was using that money in any personal venture, as distinguished from the business of the Enesco Federal Credit Union?

Mr. Shallenberger: I will object——

The Witness: No.

Mr. Shallenberger: ——to that question as being immaterial, [69] what this lady did or didn't know.

The Court: Sustained.

Mr. McLaughlin: She was one of the functionaries or representatives. If she knew it was, it would certainly obligate the bank. There is a presumption of good faith, we could indulge here, she did know it. In other words, she is presumed to act in good faith and not to violate the law.

But I was just asking her, unless this presumption is going to operate——

Mr. Shallenberger: I don't see how it could be

(Testimony of Anna Sandstrom.)

material, what Mrs. Sandstrom knew or didn't know.

Mr. McLaughlin: Suppose she knew that he was using it in his personal activities. Her knowledge would bind the bank.

The Court: All right. She may answer.

Mr. McLaughlin: Will you read the question?

(The question was read.)

The Witness: I did not.

Q. (By Mr. McLaughlin): You accepted the checks of the Enesco Federal Credit Union when you paid out the money? A. That is right.

Q. Did you know whether or not check-cashing activities were carried on over at the Enesco Federal Credit Union office?

Mr. Shallenberger: I will renew my objection, it is immaterial.

Mr. McLaughlin: The same—— [70]

The Court: Overruled.

You may answer that.

The Witness: Well, I presumed he was using it for cashing checks. I don't know what he had it for.

Q. (By Mr. McLaughlin): I mean, did you know whose business that was? A. No, I didn't.

Q. Did Mr. Alden ever state to you or in your presence anything about that being his own personal business, as distinguished from the Enesco Federal Credit Union's business? A. No, sir.

Q. Was Mr. Alden ever made a bonded messenger by the Torrance National Bank?

(Testimony of Anna Sandstrom.)

A. No, sir.

Q. Was he ever employed by the Torrance National Bank in any capacity? A. No, sir.

Mr. McLaughlin: I have no further questions.

Mr. Shallenberger: I have forgotten, your Honor, —Mr. McLaughlin, you could help me out here, too, —did we establish as part of this arrangement that checks were postdated?

Mr. McLaughlin: They were dated on the date—I don't know they all were. I think this one was, it was dated on the 3rd and brought in on the 2nd.

The Court: I don't think there has been any evidence on that, but you have mentioned it in your memoranda, which of course are not evidence. Maybe you can cover it by stipulation, if the witnesses have gone that could establish it.

Mr. Shallenberger: I will offer the stipulation as part of this practice to which Mr. Alden testified, that the custom was for the check, which was brought in on Thursday, drawn on the Enesco Federal Credit Union account, to be dated as of the following day, which was Friday.

Mr. McLaughlin: Well, could we ask Mrs. Sandstrom? She probably knows.

I know it was true as to this particular one, but I don't know whether it was always true.

Was that true, Mrs. Sandstrom?

The Witness: I wouldn't know.

Mr. McLaughlin: Anyway, this one was.

Mr. Shallenberger: I would like to establish it.

(Testimony of Anna Sandstrom.)

Cross Examination

Q. (By Mr. Shallenberger): As a general practice, is it true, generally speaking, Mrs. Sandstrom?

A. I never noticed the date, what date he had on it, if it was postdated or not.

Mr. Shallenberger: Well, I thought that maybe I could find something here in her deposition on a previous occasion. I don't notice it offhand. [72]

I don't know that it is going to be material to my case, but, in any event, if we deem it is, I may have to ask to recall Mr. Alden in connection with the matter. But for now I will drop it, in view of her answer.

The Court: Anything further from this witness?

Mr. McLaughlin: I have no further questions.

The Court: Thank you.

(Witness excused.)

Mr. McLaughlin: Plaintiff rests.

Mr. Shallenberger: I have nothing further at all, your Honor, with the possible exception of Mr. Alden coming back to testify that these checks were, as part of the custom and procedure, dated on Friday, although they were taken to the bank and paid on Thursday.

Mr. McLaughlin: I don't think it makes the least bit of difference.

Mr. Shallenberger: Well, if you don't think it makes any difference——

The Court: He has the legal theory in which it might be of importance,——

Mr. McLaughlin: Yes.

The Court: —although I think this particular check is the one that would control on that, if your theory is applicable, rather than what they did on the checks months earlier.

Mr. Shallenberger: Let me ask this, to pin it down a bit: [73]

If Mr. McLaughlin doesn't think it makes any difference, why don't you stipulate with me that was part of the custom?

Mr. McLaughlin: I would if I were sure it was. I know this—I will go this far—I know when he would bring these checks in he would bring them in after—the transaction was after 3:00, so that, in other words, it would correlate with the next day.

Mr. Shallenberger: He testified——

Mr. McLaughlin: So it probably was.

Mr. Shallenberger: He testified he would bring them in during the business day and then pick up the money after hours.

Mr. McLaughlin: Whatever it was. The money transaction would take place after 3:00. I would stipulate Mr. Alden would so testify,——

Mr. Shallenberger: All right.

Mr. McLaughlin: —provided I can have in that stipulation his explanation which he made, which was that the transaction took place after 3:00 o'clock. In other words, he got his money after 3:00, which was the beginning of the next day.

The Court: I will take a short recess and you get together on your stipulation.

(Whereupon, a recess was taken from 3:25 o'clock p.m. to 3:40 o'clock p.m.)

The Court: Did you get together on a stipulation? [74]

Mr. Shallenberger: I think we have one, which is that it was a part of the custom and procedure, that Mr. Alden would testify that it was a part of the custom and procedure, as he outlined, for him to date the checks as of Friday, although they were taken in on Thursday, and he would pick up the money after the close of business on Thursday.

Mr. McLaughlin: Yes, I will stipulate to it. I don't think it makes any difference, but I will stipulate to it.

Mr. Shallenberger: Thank you. Then I rest.

The Court: The stipulation is approved.

You have argued your positions pretty well in the memoranda. How do you want to carry on from here? Do you want to have oral argument or submit the matter on written briefs?

Mr. McLaughlin: I have pretty well exhausted my privileges. I answered his, I hope, today.

Did your Honor read that one I sent up today?

The Court: I read it, but I can't say I thoroughly digested it.

Mr. McLaughlin: Well, whatever Mr. Shallenberger prefers. I wouldn't mind making a brief discussion of it, if your Honor wants.

The Court: The court wants to give you a full trial, so you go ahead and argue, if you want to argue.

Mr. McLaughlin: All right, your Honor.

The Court: I don't mean by that I have made up my mind [75] against you.

Mr. McLaughlin: I understand.

The Court: I haven't made it up either way. It seems to the court, though, that we are concerned primarily with the definition of "forgery".

Mr. McLaughlin: Yes.

The Court: That that is going to be the controlling question in the case.

Mr. McLaughlin: Yes, your Honor, I think that it true. I will say this: This is really nothing more than an action on a contract. The indemnity bond is the contract.

We have cited the cases which say that if there is any doubt in the construction of the document, that it is construed against the insurer. But an examination of the language of that bond, your Honor,—that is one thing Mr. Shallenberger hasn't dealt with in his brief, to any extent,—shows, I believe, that the bond is even broader than our Section 470 of the Penal Code.

I don't know that Section 470—I think it is governing, I think it has some governing effect, and I think we can rely on it. But, in view of the fact that the bond was broader, I don't think we have to worry much about Section 470.

That bond covers any insurance where a document is forged, in reliance upon which money is paid out. It doesn't make any difference whether it

is a check, a note or any other kind of [76] an order.

The Court: It couldn't be such a remote thing as an application for credit?

Mr. McLaughlin: It seems so. It seems the broadest kind of language.

Of course, your Honor will also note in this case, however, that the general bond which these people issued didn't cover this kind of a liability. This was a special liability which the plaintiff bought, so it was put on this policy as a rider.

Furthermore, your Honor will note the normal amount of the bond is a fixed sum, \$75,000.00 or \$100,000.00, something like that.

In giving this type of insurance, which is very broad, they limit their liability to \$10,000.00, so, in any event, their liability is cut down to that.

I only mention those things to indicate this is not only a contract, but it is a special contract. The bank said, "We want this kind of protection," and so the insurance company said, "We will give it to you in a rider form," and that is what they got and they paid for.

Now, we are met with the contention here of one thing—I mean, Mr. Shallenberger said it was a loan, it was an overdraft. I don't care what it was. In other words, we paid the money out in reliance upon a check of the Enesco Federal Credit Union. There isn't any question in this case but what Mr. Alden used that check as the method of obtaining this money. It was delivered to the bank before the

money was paid out, so it was the document on which the transaction turned.

Yet there isn't any question that Mr. Alden had no authority to use that money in his own personal business. He quibbled about that up there on the stand.

I want to say this, your Honor, and I didn't deal with this in my points and authorities, but I have cases on it if it becomes pertinent: Even if some officer of the Enesco Federal Credit Union had known he was using this money for this purpose they couldn't have authorized it, anyway.

Your Honor has heard the law. Even these people know it was the law, and, furthermore, that is true under the credit law. In other words, they couldn't consent to it if they wanted to. They couldn't have made it a good act, as distinguished from a forgery. The same is true as to the bank.

The Court: I was thinking rather automatically and not too clearly at the time of estoppel. Estoppel wouldn't come into play here because the credit union is not a party to the action.

Mr. McLaughlin: That is true. I will say this: Your Honor has undoubtedly read that case, the Torrance National [78] Bank case which we cite in our briefs. We almost won that case on the basis of estoppel. We did win it in the trial court on the grounds of which party was the most negligent.

We aren't concerned with those things. Maybe we were negligent, maybe we were at fault, maybe if we had been more careful we would have called

up some officer of the Enesco Federal Credit Union and said, "Say, this man is getting \$30,000.00 and he is handing in unnumbered checks. What about it?"

In other words, I can conceive of instances where, if it were a case between the Torrance Bank and Enesco, where the trial judge held one way, he said that Enesco was negligent. The appellate court said they weren't, and they held the Torrance Bank was a party.

That doesn't have anything to do with the fact the bank paid the money out on the forgery. That is why they buy these bonds. You can't insure that everybody in your bank or your institution is going to be at all times completely wise and not make any errors, so you buy that just like a man buying an automobile, he buys public liability insurance. He knows he is a safe driver perhaps, and he knows he is going down the street and not have any trouble, but he still says, "If I am negligent sometime or held to be I want protection." That is what the bank did in this instance. They were buying protection, which they paid for. [79]

So it does resolve itself down, as your Honor stated, to a question of whether or not there was a forgery. And when you get down to that, as I stated, he had no authority to sign that and he couldn't have been given authority to use that money personally, and even if you disbelieved the testimony of Mr. Whitacre and Mr. Hood, and you gave Mr. Alden's testimony, vague as it was as to

these authorizations, the greatest possible weight and extent, you still would have a situation where they couldn't authorize him to misappropriate money. That is what it amounted to.

The Court: He had authority to draw checks for the purposes of the association.

Mr. McLaughlin: That is true.

The Court: When did the wrongful part of it come into play?

Mr. McLaughlin: When he drew it for a purpose of his own, and that is true of—your Honor will find in one case I can pick out of the air, the 7 California Appeal (2d) case, which Mr. Shallenberger cited and which I cite, too, in my reply brief, that that is an instance where an officer had misappropriated money.

In other words, most of these forgeries, or a great number of them—there are others cited in my brief—are instances where the officer has authority to do this and they are always the ones that take advantage. What do they do? [80] They forge the signature and use it for themselves. It becomes a forgery when they write it without authority; written without authority for that particular act. In other words, when you are using the money yourself and you are drawing the check for your personal use, it is then without authority. The fact that you have general authority to sign a check on the account of your corporate principal does not mean that you can sign checks on your corporate principal and put the money in your pocket, knowing you are going to do that.

Mr. Alden knew that. This is conceded, the only purpose he would get that money for was to cash his own checks in his own business.

So, your Honor, it is like all of these cases. As I state, most of the forgeries involve signing somebody else's name. Incidentally, under the Penal Code section that is one of the things it says, signing a name without authority.

Assume I give Mr. Shallenberger authority to sign checks for a certain purpose or sign a certain check. He has authority to do that. That is for a specific purpose. That doesn't mean, just because he has got authority to sign checks, he has got authority to misappropriate. Forgery includes that type of embezzlement.

I say again, your Honor, all we have to do—and I am not going to even take the time to look or to quote, because [81] it is quoted in my brief, both Section 470 of the Penal Code and also the language of this bond. That is the point.

As I say, I think the answer is very clear, that this was a forgery. It was the type of thing he could have—in other words, it was a criminal act. So far as that is concerned, it was an act creating liability so far as this concern is concerned.

I don't believe there is much else I have to talk about in this case. Mr. Shallenberger's brief indicates—and I will say this with all due credit to him—the weakness of his case. All he has come up with is cases.

I am not taking any credit, your Honor, but I notice the cases he cited are cases apparently some-

body in his office got out of our brief in that other Torrance Bank case.

They don't deal with forgery. They deal with who is liable as between two parties, as, for instance, the Boston Insurance case. That was the case we persuaded the trial court to rule with us on, and we thought we could win in the appellate court.

The appellate court said that the Boston Insurance Company case wasn't in point. They don't even mention forgery. They are not involving an action on the forgery of bonds. They are not involving a criminal action of forgery, but only who is liable as between the two parties, the bank or the insurance company. We had them all in our other brief. [82]

At that time, in that Torrance case, we were not concerned with the question. I believe everybody assumed there had been a forgery; there wasn't any question about it.

The question in that case was, was your bank more negligent than the Enesco?

The court, as your Honor will recall, did put a great deal of weight on—after all, what he was doing was borrowing money on these checks. Of course, the court didn't notice there was actually ten thousand some-odd dollars in that account at the time the check was delivered to the bank. They put stress on the fact that, after all, it was an overdraft. He couldn't have had any ostensible authority, anyway.

Your Honor can see how this developed. There is enough evidence here to show that originally this act was something Mr. Alden was permitted to do.

It was a deal they started out as small, and so forth.

He was told later on they had to stop it, and, of course, there is no question about the meeting of March 17, 1953, when he was very clearly told; and where he made the representations to them, "I am not using your money at all. I deal with the bank," and so forth.

Your Honor, I think that is a logical explanation to this whole situation, too. Why would Mr. Whitacre or Mr. Hood or anybody else connected with the Enesco Federal Credit Union permit a man to use \$30,000.00 of their money, unless they had [83] authority to do it? They wouldn't have.

I know Mr. Alden was in a spot. I have a great deal of sympathy for him. I will say that I think it is very clear, by measuring his own testimony, he had no authority and couldn't have gotten authority to do what he did. I submit the case is just that simple, so far as the bond is concerned.

We come within the terms of the bond. We paid money out on a forged document. I mean, we are entitled to a decree.

With that, your Honor, I think I will conclude.

The Court: Do you want to write some briefs or do you want to argue?

Mr. Shallenberger: I don't think there is any necessity for further writing briefs, if I may reply very briefly to what he has said.

The Court: Certainly.

Mr. Shallenberger: Actually, I think that the points have been thoroughly covered in the documents that we have submitted. I only wanted to

add this: That it seems to me that the weakness of Mr. McLaughlin's position is demonstrated by his reply to my memorandum of points and authorities, because throughout, in presenting his case he begs the question. He never gets down to tacks and says, "The law isn't the way Mr. Shallenberger says." He doesn't do that at all. But, instead, he dodges it, and I think that is apparent from reading it. [84]

One question which he raises is the meaning of our bond here. I don't see there is any ambiguity in the bond, and I don't believe that the matter is even being seriously presented. It seems to me that counsel has got to come down to the conclusion, which actually was stated as the issue by your Honor, was this a forged document, because, before the plaintiffs in this case can have any action of any sort, regardless of whether it is treated as a loan or any other type of a transaction, it has got to be a loss resulting from a forged instrument.

So the question is, is this a forgery? That is the way the issue has got to boil down.

Now then, one thing which counsel has done in his brief in this case, he has made the statement that the State action, which is in 134 Cal. App. (2d) and involved the same party plaintiff here, Torrance National Bank in its suit against Enesco, he said the holding in that case was that the check was a forgery.

That is not the holding of the case and there is no such holding in that case. As a matter of fact, I have quoted in my brief a small portion of that

holding, and I think it is the specific holding of the case.

If I may, I would just like to read it, your Honor, at this time. Reading from page 328 of that opinion:

“The transaction now being considered involved [85] only one check.”

They are in that case considering exactly the same transaction we have been talking about here today. Continuing now with the opinion:

“It was unauthorized.”

That is the further reason that the court gives, they say the check was unauthorized. That was the conclusion they came to. And they go on in this very significant language:

“The fact that any check for an amount less than or up to the amount of deposit would have been authorized does not alter the fact that the check involved in the instant case was unauthorized.”

In other words, what the case is holding is that if these checks that we are involved with here had been for, say, \$9,000.00, then they would have been perfectly proper and the Enesco Federal Credit Union ultimately would have been the one who would have had to suffer the loss in the case.

So the mere fact that he wrote a check for an amount in excess of that which was on deposit has only one effect, namely, a lack of authorization to write that large a check and, certainly, it does not constitute any forgery.

In that connection I have cited some cases to your Honor where the courts recognize the fact that there are two [86] possible means for a bank in a

situation like this to suffer a loss. One would be because of a forgery, and one might be because of a lack of authorization on the part of the person who is drawing the check for another. And they recognize that.

You will see in the cases where they say, "Well, this may be either unauthorized or it may be a forgery." They put the "or" in there all the time. One case even goes so far as to say—I cited it to your Honor—"It is true we must indulge in a presumption that what this man was doing was correct, and therefore we can't indulge in the presumption it was a forgery, but we can indulge in the presumption it was unauthorized." And that case specifically recognizes that very distinction.

There was that first point made here, and nothing in the Penal Code section cited or nothing in our bond can change that fact.

In connection with the Penal Code, I would like to point out to your Honor that what they are talking about there, as is apparent from the cases, is a lack of authorization to sign checks; a lack of authorization to sign. In other words, if you don't have the right to sign the signature of another, that is forgery. That is what the Penal Code says.

The Court: And you are saying that here he had the authority to sign and that what he did was to misapply the funds? [87]

Mr. Shallenberger: That is all. I say that doesn't make a forgery. That is the sum and substance of it.

In that connection I might point out one other case which gives a definition of "forgery".

The Court: The case is not cited?

Mr. Shallenberger: It is not cited in mine. I am not sure whether plaintiff cited it in his or not.

The Court: Let's have it then.

Mr. Shallenberger: It is *People v. Ryan*, 74 Cal. App. 125, at page 128. This portion I am referring your Honor to, I think, is incidental language or dicta, you might say, but I think it is helpful to us, in any event. The case says:

"Special reliance is placed by appellant upon decisions which hold that 'It is the essence of forgery that one signs the name of another to pass it off as a genuine signature of that other.' "

Then the court goes on and says, "Well, we aren't applying that rule here" because we have the fact that he signed a fictitious name in the *People v. Ryan* case. But they recognize the validity of the rule. In other words, we don't have any question of fictitious name, so we aren't concerned with that phase of it.

People v. Ryan goes on to make the distinction. And my point is, in citing it to your Honor, they are telling us what the essence of the forgery is. I submit there is nothing of that sort here at all.

The other point I think is covered sufficiently, namely, that in any event the bank wasn't relying on the check which was being presented. That therefore it was not an instrument which was being uttered, passed or made with the intent to defraud. That point, I think, is covered adequately in my memorandum, and I think it is the secondary reason why there couldn't be a forgery in this case.

Thank you.

Mr. McLaughlin: Your Honor, I don't care to reply, except that this Walsh case is an example. Counsel cited it first. That is on page 6 of my reply brief.

That is about an officer of a corporation who had authority to sign checks, but he was held to have forged when he signed checks for his own purposes.

If the argument Mr. Shallenberger makes on forgery were true, then there never would be an instance where an officer of the corporation or any bank could ever be held in forgery, so long as he was authorized to sign checks generally. In other words, he would never be liable for forgery, because authority to sign would be deemed as authority to sign, regardless of what purpose. That is not the law, your Honor.

That is all I have to say.

The Court: The court has read your briefs. You call them memoranda, but they are really briefs.

I have had a very busy court here during the past few weeks and I have not gone back of them and read the cases. I would like to do that before coming to a decision, so the matter will stand submitted.

(Whereupon, at 4:03 p.m., Wednesday, November 28, 1956, an adjournment was taken.)

[Endorsed]: Filed July 1, 1957.

[Endorsed]: No. 15627. United States Court of Appeals for the Ninth Circuit. Torrance National Bank, a national banking association, Appellant, vs. The Aetna Casualty & Surety Company, a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: July 17, 1957.

Docketed: July 17, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15627

TORRANCE NATIONAL BANK, a national
banking association, Appellant,

vs.

THE AETNA CASUALTY & SURETY COM-
PANY, a corporation, Appellee.

APPELLANT'S STATEMENT OF POINTS ON
WHICH IT INTENDS TO RELY ON AP-
PEAL

To Paul P. O'Brien, Clerk of the U. S. Court of
Appeals:

Comes now the above-named appellant and, in

connection with the above-entitled appeal, hereby sets forth the points on which it intends to rely on appeal:

1. The signing by Joseph Alden of the \$30,000.00 check as Treasurer of Enesco Federal Credit Union was a signing without authority, and, therefore, when Joseph Alden cashed it at appellant bank, this constituted a forgery within the meaning of appellee's bond and the law of the State of California which rendered appellee liable.

2. Where an agent authorized to sign on his principal's bank account does so for the purpose of obtaining moneys for his personal use, this constitutes a forgery.

3. The District Court erred in relying upon a decision which involved forgery committed before the amendment to Section 470 of the Penal Code, which amendment made the signing without authority a forgery.

4. The District Court erred in failing to apply the rule that if there was any uncertainty in the meaning of the bond, such uncertainty should have been resolved against the appellee who drafted the bond.

5. Even though a representative of appellant bank had known that Joseph Alden was using the moneys for his personal check-cashing business, this would not defeat appellant's right to recover on the forgery bond.

The entire record as certified to you must be

printed in its entirety, as the above points upon which appellant intends to rely on appeal are framed by the pleadings, exhibits, oral proceedings at the time of the trial, as reflected by the reporter's transcript thereof, and by the findings and judgment.

Dated the 15th day of July, 1957.

/s/ JAMES A. McLAUGHLIN,
Attorney for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 17, 1957. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF PAPERS AND RECORDS
ON APPEAL

To Paul P. O'Brien, Clerk of the U. S. Court of
Appeals:

Please Take Notice that plaintiff on its appeal hereby designates, as being material to the consideration of the appeal and for inclusion in the printed record on appeal, the following pleadings, papers, records and exhibits, to wit:

1. The Amended Complaint for Declaratory Relief;
2. The Amendment to Amended Complaint for Declaratory Relief;

3. The defendant's Answer to the Amended Complaint;
4. The trial court's Memorandum of Decision dated March 28, 1957;
5. Findings of Fact and Conclusions of Law;
6. Judgment;
7. All exhibits admitted in evidence;
8. Plaintiff's Notice of Appeal and Designation of Papers and Records on Appeal;
9. The Reporter's Transcript of the trial proceedings; and
10. All minute orders of the trial court.

Dated this 15th day of July, 1957.

/s/ JAMES A. McLAUGHLIN,
Attorney for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 17, 1957. Paul P. O'Brien.
Clerk.

